Exhibit A

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: LEHMAN BROTHERS HOLDINGS, INC., *et al.*, Debtors	Chapter 11 Case No. 08-13555 (Jointly Administered)

EXPERT REPORT OF

JOHN P. GARVEY

MARCH 15, 2010

Table of Contents

List of Appendices

I. INTRODUCTION

1. This report is submitted by John P. Garvey. I am a Managing Director at Navigant Economics, a subsidiary of Navigant Consulting, Inc., a consulting firm that specializes in accounting, economic and financial analyses. I discuss my qualifications in more detail in Section II and present my curriculum vitae in Appendix I.

2. I have prepared this report at the request of Counsel for Movants to set forth the subject matters on which I expect to testify, the substance of the facts and opinions on which I expect to testify, and a summary of the foundations for each such opinion.[1, 2] In preparing this report, I have reviewed various documents related to this issue, as cited in the text and footnotes in this report and exhibits and/or Appendix II.

3. Navigant Economics (Chicago Partners) charges an hourly rate of $580 for my time. Other Navigant Economics (Chicago Partners) professionals, working under my direction and supervision, assisted in my analyses and Navigant Economics (Chicago Partners) was or will be compensated for their work at their customary hourly rates. This compensation is not contingent upon the substance of my testimony or the outcome of this matter.

4. The remainder of the report is organized as follows. Section III summarizes my opinions. Section IV provides the bases for my opinions.

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[1] This report concerns three motions before the Court:

1) Motion of Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc. for Relief from Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, Dated September 20, 2008 (and Related SIPA Sale Order) and Joinder in Debtors' and SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify Sale Order, September 15, 2009;
2) The Trustee's Motion for Relief Pursuant to the Sale Orders or, Alternatively, for Certain Limited Relief Under Rule 60(b), September 15, 2009; and
3) Debtor's Motion for an Order Modifying the September 20, 2008 Sale Order and Granting Other Relief, September 15, 2009.

[2] If I receive additional data, facts, or information, I will review, evaluate, and analyze these additional data, facts, or information as they become available, including, but not limited to, the report(s) of experts in this matter. I may modify or supplement my report as necessary in response to any newly produced evidence or in rebuttal to any further opinions offered by Barclays' witnesses.

II. SUMMARY OF QUALIFICATIONS

5. My present position is Managing Director at Navigant Economics (Chicago Partners), a subsidiary of Navigant Consulting, Inc. Navigant Economics (Chicago Partners) specializes in consulting in the areas of accounting, economics, and finance. I am a CPA licensed in Illinois and my areas of expertise include accounting and auditing, finance and business valuation.

6. Prior to rejoining Chicago Partners in 2001, I was Market Team Leader for Business Fraud and Investigation Services at Arthur Andersen, specializing in forensic accounting, board-directed investigations and accounting irregularities. Prior to joining Chicago Partners initially, I was Vice President with Fort Dearborn Partners, Inc., specializing in business valuation, mergers and acquisitions, turnaround consulting, and litigation consulting. Prior to joining Fort Dearborn Partners, I was a Partner with Deloitte & Touche, where I spent fourteen years in the audit group.

III. SUMMARY OF OPINIONS

7. This section of my report summarizes my opinions. In the remaining sections of the report, I provide the substance of the facts and opinions on which I expect to testify, and the bases for each such opinion. If I receive additional data, facts or information, I will review, evaluate, and analyze these additional data, facts or information as they become available, including, but not limited to, the report(s) of experts in this matter. I may modify or supplement my report as necessary to reflect any additional information that I receive.

Opinion 1: Professor Pfleiderer's opinions regarding book value are flawed.[3]

[3] Professor Paul Pfleiderer was retained by Counsel for Barclays and submitted a report dated January 8, 2010 (the "Pfleiderer Report") "to analyze certain economic, financial, accounting, and valuation issues arising in this matter." Pfleiderer Report, ¶2.

Opinion 2: The Acquisition Balance Sheet is not representative of the values Barclays received in the acquisition and had a claim on as of September 19, 2008.

Opinion 2(a): The practice of marking securities from mid to bid is driven by fair value accounting rules and results in a conservative valuation of the securities.

Opinion 2(b): Barclays inconsistently and subjectively applied the methods used to mark securities from mid to bid in the Acquisition Balance Sheet.

Opinion 2(c): Barclays' use of valuation dates after September 22, 2008 is not supported by the accounting literature and results in understated values for certain securities in the Acquisition Balance Sheet.

Opinion 3: Professor Pfleiderer's evaluation and reliance on PriceWaterhouseCoopers' ("PwC") "extensive" testing of Barclays' exit price marks are flawed.

Opinion 4: Professor Pfleiderer is misguided in his analysis of the negative goodwill Barclays recorded.

IV. OPINIONS AND BASES THEREOF

8. This section discusses my opinions and the bases of my opinions.

Opinion 1: Professor Pfleiderer's Opinions Regarding Book Value are Flawed

9. Professor Pfleiderer's opinions regarding the definition of *book value* are flawed. Paragraph 82 in the Pfleiderer Report states: "[f]urthermore, to the best of my knowledge, 'book value' does not have a definite meaning in this context, such that a financial professional would understand it, as the Movants apparently do, to be synonymous with the 'marked' value of the assets and liabilities on Lehman's books as of any arbitrary date and without regard to the quality and timeliness of Lehman's marks on such date."

10. However, the term *book value* is not an obscure term as Professor Pfleiderer indicates. Financial professionals have many sources to gain an understanding of the term *book value*.[4] A generic search of web-based dictionaries and encyclopedias provides the following definitions of *book value*:

- The monetary amount by which an asset is valued in business records, a figure not necessarily identical to the amount the asset could bring on the open market.[5]
- [T]he value of a business, property, etc., as stated in a book of accounts (distinguished from market value).[6]
- The value at which an asset is carried on a balance sheet. . . .[7]
- In accounting, book value or carrying value is the value of an asset according to its balance sheet account balance. . . .[8]

11. In addition, the term *book value*, as commonly used in commerce and industry, does not contemplate any of the restrictions Professor Pfleiderer mentions in paragraph 82 of his report. As illustrated above, the term *book value* denotes the value of an asset (or a liability) recorded in the books at any point in time. The term *book value* makes no reference to the specific date an asset or a liability is recorded in the accounting records nor does the term *book value* embody the concept of timely review or update of the value of an asset or liability to ensure that the account reflects the latest information.

12. Professor Pfleiderer's assertions in paragraph 82 of his report are inconsistent with how the term *book value* is used in the Asset Purchase Agreement ("APA") to describe components of the Purchased Assets and Assumed Liabilities:

> "Purchased Assets" means all of the assets of Seller and its Subsidiaries used in connection with the Business (excluding the Excluded Assets), including;
>
> * * *

[4] *See* Appendix III.
[5] http://www.thefreedictionary.com/book+value, based on The American Heritage Dictionary of the English Language, 4th edition, last visited on March 10, 2010.
[6] http://dictionary.reference.com/browse/book+value, based on The Random House Dictionary, last visited on March 10, 2010.
[7] http://www.investopedia.com/terms/b/bookvalue.asp, last visited on March 10, 2010.
[8] http://en.wikipedia.org/wiki/Book_value, last visited on March 10, 2010.

> (d) government securities, commercial paper, corporate debt, corporate equity, exchange traded derivatives and collateralized short-term agreements with a book value as of the date hereof of approximately $70 billion.
>
> * * *
>
> On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities of Seller and its Subsidiaries (collectively, the "Assumed Liabilities"):
>
> * * *
>
> (i) all short positions and "repos" relating to any securities or interests of the types included in the definition of "Long Positions" with a book value as of the date hereof of approximately $69 billion[9]

13. Moreover, the APA used the term *book value* interchangeably with the term *Lehman (LBI's) marks*.[10] The source of Lehman's marks is a central database system for pricing and other data called Lehman Global Funding System ("GFS").[11] GFS tracked financial assets at their fair value marks and updated these marks on a periodic basis. GFS gathered pricing data from the trading desks each evening; therefore, GFS contained the most recent information from the previous trading day.[12] Marks, however, were updated at various intervals, depending on the type of security, as explained by Steven Berkenfeld in his deposition:

> [N]ot all types of securities were marked every day. We did not mark our entire book of securities on a daily basis. We owned lots of level 3 securities, esoteric securities, and so we didn't go through a daily process of marking those. Some of those positions would be marked on a monthly or even a quarterly basis.[13]

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[9] Asset Purchase Agreement, September 16, 2008, page 6, and pages 11-12.

[10] Section 3.3 of the APA, "Adjustment to Cash Amount", states: "Promptly following the first anniversary of the Closing Date, Purchaser shall determine with respect to each Position (long or short, including repos), that was part of the Purchased Assets and was sold on or prior to such first anniversary, the profit or loss realized from such sale (such profit or loss determined by reference to LBI's mark (book value) for such Position as of the date hereof)." (APA, Section 3.3).
However this provision was removed by the Sale Hearing on September 19, 2008, Lori Fife told the court: "There was an upside sharing in the original transaction. There was going to be a true-up twelve months later on and that has been eliminated from this transaction." (9/19/08 Hearing Tr. 47:7-10) Further, Paragraph 9 of the Clarification Letter removed this provision from the APA.

[11] "GFS" is Lehman's Global Funding System, "a global data warehouse that provides strategic and flexible reporting capabilities related to the Firm's financial resources." (BCI-EX-(S)-00213941 and BCI-EX-(S)-00213939) It is also sometimes referred to as Global Finance System, Global Financing System, or Global Financial System.

[12] Paolo Tonucci stated in his deposition: "Market data is received from other systems. GFS is just an aggregation tool, so would source data from settlement systems or from other pricing sources and apply that to the inventory positions or collateral positions. . . . It runs on an overnight basis so it should pick up all of the most current information." (Deposition of Paolo Tonucci, August 14, 2009, 95:5 – 96:3)

[13] Deposition of Steve Berkenfeld, August 6, 2009, 299:14-21.

14. Both Lehman and Barclays use the term *book value* in their respective annual reports and regulatory filings. In its Annual Report for the fiscal year ended December 31, 2008, Barclays PLC offered a table analyzing "the book value of securities which are carried at fair value."[14] In this table, Barclays PLC clearly distinguished "the book value of securities which are carried at fair value" from the "amortized cost" of the securities. Similarly, in its Form 10-K for the fiscal year ended December 31, 2007, Lehman Brothers Holdings Inc. stated: "Lehman Brothers Bank disposed of a leasing subsidiary, Dolphin Capital Corp., acquired in the acquisition of Capital Crossing. The transaction was an asset sale and amounts were transferred at approximately book value."[15]

15. In addition, Professor Pfleiderer contradicts himself regarding *book value* in his report. Professor Pfleiderer asserts that the term *book value* has no definite meaning, yet in Footnote 61 to his report, he quotes the APA to describe the "approximate valuation of the trading assets it [Barclays] would be acquiring" as having a "book value as of the date hereof or approximately $70 billion."[16] Further, Exhibit 8 to the Pfleiderer Report, uses "book value of target's net assets" as a basis for computing goodwill in seven bank acquisitions. The regulatory filings of financial institutions in Exhibit 8 define the meaning of *book value* as the amount at which an asset or a liability is reflected in accounting records.[17]

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[14] Barclays PLC, Annual Report for the fiscal year ended Dec-31-2008 at 34, 26, 88.

[15] Lehman Brothers Holdings Inc., Annual Report (Form 10-K) for the fiscal year ended Nov-30-2007 at 46.

[16] Footnote 61, to ¶73, in the Pfleiderer Report states: "First, even though there was no reason do to so, Barclays allowed to be included in the Asset Purchase Agreement a description and **approximate valuation of the trading assets it would be acquiring**: 'government securities, commercial paper, corporate debt, corporate equities, exchange traded derivatives, and collateralized short term agreements **with a book value as of the date hereof of approximately $70 billion**." (emphasis added).

[17] "Book Value' means, with respect to any Asset and any Liability Assumed, the dollar amount thereof stated on the Accounting Records of the Failed Bank. The Book Value of any item shall be determined as of Bank Closing after adjustments made by the Receiver for differences in accounts, suspense items, unposted debits and credits, and other similar adjustments or corrections and for setoffs, whether voluntary or involuntary." (WestAmerica, (Form 8-K) (2/6/2009) at 2).
See also JP Morgan (Form 10-K) for the fiscal year ended Dec-31-2008 at 140: "The gain represents the amount by which the fair value of the net assets acquired (predominantly intangible assets and goodwill) exceeded JPMorgan Chase's book basis in the net assets transferred to First Data Corporation."
See also JP Morgan (Form 10-K) for the fiscal year ended Dec-31-2008 at 220: "Derivative guarantees also include contracts such as stable value derivatives that require the Firm to make a payment of the difference between the market value and the book value of a counterparty's reference portfolio of assets in the event that market value is less than book value and certain other conditions have been met." (JP Morgan, Form 10-K for the fiscal year ended Dec-31-2008, page 220).

Opinion 2: The Acquisition Balance Sheet is not Representative of the Values Barclays Received in the Acquisition and had a Claim on as of September 19, 2008.

16. This section highlights several flaws and inconsistencies in the valuation methods Barclays employed to determine the "exit price marks" included in the Acquisition Balance Sheet.[18] Professor Pfleiderer either ignores these flaws and inconsistencies in his analysis or accepts them without any analysis or consideration of the effects of such information in his opinions.

17. Barclays' Product Control Group ("PCG") was responsible for independently verifying the valuations developed by Barclays' business teams.[19] The record contains conflicting information regarding the valuation methods Barclays used to value the acquired assets on the Acquisition Balance Sheet. The securities acquired comprise of several components described below.

A. SCHEDULES A AND B

18. Not valuing the securities on Schedules A and B on the Closing Date of the Sale Transaction is incorrect. Schedules A and B contain lists of securities that were transferred to Barclays in September 2008. Schedule A contains securities that were part of the repurchase agreement collateral, and Schedule B contains assets in the "clearance boxes."[20] According to the Romain Declaration, the Schedule A securities were valued as of September 22, 2008.[21] The Romain Declaration is not clear regarding the valuation date for the Schedule B securities, but the underlying data indicate that the Schedule B securities were valued as of various dates discussed below.

19. In addition, the data used to develop the Acquisition Balance Sheet contradicts the Romain Declaration and indicates that not all Schedule A and B securities were valued as

[18] Barclays' opening balance sheet for its acquisition of Lehman Brothers North American businesses is contained in Barclays' 2008 Form 20-F and Annual Report (footnote 39(a) on page 235). In depositions, Exhibit 377A is commonly referred to as the opening balance sheet. The net assets acquired shown in Exhibit 377A match those in Barclays' 2008 Form 20-F. There are, however, some differences in several individual line items.
[19] Declaration of Gary Romain, January 26, 2010 ("Romain Declaration"), ¶5.
[20] Romain Declaration, ¶17 and ¶18.
[21] Romain Declaration, ¶18.

of September 22, 2008. A Barclays' spreadsheet with CUSIP-level price detail[22] that supports the Acquisition Balance Sheet indicates that Principal Mortgage Trading Group ("PMTG")[23] securities were valued using September 30, 2008 price data if the securities were still held at that date. PMTG securities that were sold between the Closing Date[24] and September 30 were valued at the sale price.

20. Barclays' rationale for using a September 30 valuation date appears to be based in part on or supported by a statement by Romain in an email dated December 11, 2008, in which he states: "we [Barclays] got control of /access to the assets on that day (possibly the day before)."[25]

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[22] BCI-EX-00099519 - 108699.xls (a file in MS Excel native format).

[23] Declaration of Stephen King, January 27, 2010, ¶2.

[24] Documents in the record refer to September 19 (Friday at market closing), September 20 (Saturday – a non-trading day), September 21 (Sunday – a non-trading day) or September 22 (Monday –opening) as the Closing Date. For example, Romain states "[t]he measurement date is the acquisition date (Sunday 21 September – practically 19 September close)" at BCI-EX-00218500-501.
The facts are:

- The Sale Hearing occurred on September 19, 2008. (Hearing Transcript, September 19, 2008.)
- The Sale Order was approved in the early hours of September 20, 2008. (Hearing Transcript, September 19, 2008.)
- Paragraph 4.1 of the APA states: "Unless otherwise agreed by the parties in writing, the Closing shall be deemed effective and all right, title and interest of Seller to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:01 a.m. (New York time) on the Closing Date." (APA, ¶4.1.)

[25] BCI-EX-00218500-501. In the same e-mail (e-mail to Jon Holloway (of PwC) et. al. (including Patrick Clackson), titled, "Valuation of Securities," and dated Dec-11-2008, Romain continues:

> I believe that is also the argument just presented to Patrick [Clackson] as acceptable from your [PwC] perspective… [happy to view the balance as a receivable for the intervening 10 days if that helps, as per JP portfolio]
> The mid-prices that have been used to date are for 19 Sep. However, that's not too relevant – we could replace these prices with mid-prices for the 30th instead – the valuation adjustment necessary to get to 30th Sep bid would then be a different balancing number. However there is no point conducting that exercise since the net fair value number will be the same (i.e. 30th Sep bid).

In a subsequent e-mail (e-mail to Jon Holloway et. al. (including Clackson), dated Dec-14-2008 (also at BCI-EX-00218500), Romain enclosed the Dec-11-2008 e-mail cited above and added:

> The measurement date is the acquisition date (Sunday 21 September – practically 19 September close). However, our objective is to measure an appropriate bid level for the acquired securities. By bid we mean a genuinely attainable exit price for Barclays taking into account the way in which securities were acquired and the pattern of events in the days following the completion. In my mail below, by "control" I do not refer to legal ownership, which was established immediately upon completion of the acquisition, but rather practical control and the substantive ability to transact.
>
> * * *
>
> We believe this to be the most representative way we look at the transaction for valuation purposes. The opposing view is that we must use a market /model bid price on the date of legal ownership and the identified circumstances cannot be taken into account. I [Gary

21. The use of September 30, 2008 as the "measurement date" for certain securities is confirmed by a Barclays document entitled "Lehman Opening Balance Sheet – Barclays Capital Valuation Methodology"[26] ("Barclays' Valuation Memo"), which describes the use of different valuation dates for certain types of securities. According to Barclays' Valuation Memo, security types perceived as liquid (agency mortgages, corporate bonds, emerging markets, equities, and Treasuries/agencies) were valued using market data as of September 22, 2008. Exceptions to this rule include corporate bonds, which were valued using "min of available 3rd party data (much of it Trace)."[27]

22. A Barclays' valuation memo also describes the process for valuing securities perceived as illiquid (municipal bonds, and structured and securitized products of the PMTG).[28] Municipal bonds were valued as of September 19, 2008, net of an "imbedded haircut."[29] For PMTG assets sold between the Closing Date and September 30, 2008, the traded price was used to value the asset. For PMTG assets that were still on hand at September 30, 2008, "the PTMG desk was utilized with liquidity haircut applied to desk mark to bring it to a fair value under the extenuating market conditions."[30]

23. In his deposition, Professor Pfleiderer testified that the PMTG spreadsheet had many CUSIPs valued at sale price. He stated:

> And whenever Barclays in those cases had an initial mark as they oftentimes did, and then a sale transaction that occurred very shortly thereafter, they took the initial mark with the liquidity adjustment as the – as the value to be assigned for that particular CUSIP.[31]

24. Professor Pfleiderer opined further:

> And so it would be rather presumptuous for me to say that Barclays who is marking this at the actual sale that they realized is wrong and that there's a better

Romain] hope we can reach some common ground here [between Barclays and PwC] – happy to discuss further.

[26] BCI-EX-(S)-00213991-92.

[27] BCI-EX-(S)-00213991.

[28] BCI-EX-(S)-00213991.

[29] This may refer to a "liquidity haircut," as this asset class was described as "extremely illiquid at the time" in Barclays' Valuation Memo. See discussion of Barclays' use of the terms "haircut" and "liquidity haircut" below.

[30] BCI-EX-(S)-00213991.

[31] Deposition of Professor Paul Pfleiderer, February 23, 2010, 110:20-111:12.

indication of what value they could have realized than what they actually realized immediately after the transaction.[32]

25. Professor Pfleiderer fails to acknowledge that the majority of the purported sales Barclays "realized" were internal transfers from one Barclays' book of accounts to another Barclays' book of accounts. Specifically, Exhibit 533A distinguishes between $37.2 billion of assets transferred internally from the central book to a Barclays trading desk and $7.2 billion of assets that were sold externally to the market.[33]

26. In addition, Professor Pfleiderer fails to define what sale constitutes a sale occurring "immediately after the transaction" and what sale constitutes a sale occurring "very shortly after the transaction." He does not define how far out into the future a date ceases to meet his notion of "very shortly" or "immediately" after the September 30, 2008 transaction. Professor Pfleiderer's notions of "very shortly after" and "immediately after" are vague and unscientific. Moreover, any choice of a valuation date other than the Closing Date is incorrect and does not comply with relevant accounting principles. (See Section 2(c) below).

B. ANNEX A

27. Not valuing the securities on Annex A on the Closing Date of the Sale Transaction is incorrect. Annex A is a list of securities delivered to Barclays in December 2008 under the Settlement Agreement between JPMorgan Chase Bank, N.A. ("JPMorgan"), Barclays Capital Inc., and James W. Giddens, as Trustee in the Securities Investor Protection Act Liquidation of Lehman Brothers Inc. dated December 5, 2008 ("Settlement Agreement").[34] The Annex A securities were intended to be transferred to Barclays on the Closing Date as part of the Sale Transaction.[35] The securities were held by JPMorgan and were not transferred to Barclays on the Closing Date due to various operational issues.[36]

[32] Pfleiderer Dep., 110:7-16.
[33] Exhibit 533A (BCI-EX-00295932-33, at BCI-EX-00295932)
[34] Settlement Agreement from SIPA.
[35] Declaration of Shari D. Leventhal, Federal Reserve Bank of New York, ¶22.
[36] Leventhal Declaration, ¶14.

28. The Annex A securities were valued as of December 22, 2008, the date of receipt by Barclays.[37] Barclays' accounting/valuation rationale for using this valuation date appears to relate to a theory posited by Romain that they did not have "practical control and the substantive ability to transact".[38] An email from Romain to Barclays' independent auditors, PwC, dated October 24, 2008, written in anticipation of delivery of the Annex A securities, states:

> Re the securities that JPM are (finally…) going to deliver to us – we need to value these on the date we receive them. To go back to 19/9 would be inappropriate since we had no control over these securities between close date and delivery date. The negotiation with JPM was over what value of cash/securities they were going to deliver to us – that value is determined by reference to the valuation on delivery date.[39]

29. The documents and analyses supporting the Acquisition Balance Sheet also indicate that Annex A assets were valued as of December 22, 2008.[40] Professor Pfleiderer concurred with Barclays' choice of December 22, 2008 (and not the Closing Date) as the measurement date for Annex A:

> [I]t was appropriate to judge, or value, I should say – again as an upper bound – the repo capital that was received as of December as of a December and not as of a September date. So because of the complexity of what actually occurred, there is not a single date involved here.[41]

30. Barclays' choice of a valuation date other than the Closing Date is incorrect and does not comply with relevant accounting principles. (See Section 2(c) below).

C. VALUATION ADJUSTMENTS AND "HAIRCUTS"

31. Barclays used the terms "haircut," "liquidity haircut," and "liquidity discount" in its valuation analyses to describe different types of adjustments Barclays made to the value of securities included in the Acquisition Balance Sheet. Barclays vested these terms with multiple meanings and the related Barclays adjustments include various components as described below.

[37] Romain Declaration, ¶19.
[38] BCI-EX-00218500-501.
[39] BCI-EX-(S)-00110050.
[40] BCI-EX-00108700.xls.
[41] Pfleiderer Dep., 131:8-16.

32. The values in the Schedule A and Schedule B spreadsheets (Exhibit 86A and 641A) and the Annex A spreadsheets (Exhibit 87B and 641A), which support the amounts in the Acquisition Balance Sheet, contain a "market value w/ liquidity" table which is used to adjust the values reported in the Acquisition Balance Sheet.[42] The "market value w/ liquidity" table is often net of various adjustments in addition to the typical "haircut" applied to repo collateral. For example, the "market value w/ liquidity" table typically reflects a bid-offer adjustment (described below), but may also reflect an adjustment designed to result in an exit price mark as of a subsequent valuation date. Below I discuss how Barclays used different valuation adjustments and related terminology to systematically understate the value of securities included in the Acquisition Balance Sheet.

Opinion 2(a): The Practice of Marking Securities from Mid to Bid is Driven by Fair Value Accounting Rules and Results in a Conservative Valuation of the Securities.

33. Barclays intended to record the securities acquired from Lehman at "exit price marks".

34. Gary Romain, Head of Technical Accounting and Private Equity Finance for Barclays Capital, stated Barclays' objective was "to measure an appropriate bid level for the acquired securities."[43] Patrick Clackson, Chief Financial Officer of Barclays Capital, further described Barclays' rationale for why positions were valued at bid level "under IFRS accounting rules":

> All trading positions, where you have a long position you value it at the bid and short position you value at the offer price. The specific accounting rules around acquisitions are you have to fair value all the assets and liabilities when you acquire, when you do the acquisition, and in terms of fair valuing financial instruments you have to value long at bid and short at offer.[44]

35. International accounting standards (i.e. IAS 39, ¶AG70) use the terms *bid-price*, *asking price*, and *current-offer price* but do not reference the term *exit price*. Fair value

[42] Deposition Exhibits 86B (BCI-EX-00099519-521), 87B (BCI-EX-00108700), and 641A (BCI-EX-(S)-00213990-993).
[43] BCI-EX-00218500-1.
[44] Deposition of Patrick Clackson, September 4, 2009, 142:16-24.

accounting rules under U.S. GAAP allow the practice of marking from mid to bid in an effort to approximate an "exit price."[45] The practice of marking from mid to bid yields a conservative measure of fair value. Such conservative measures of fair value recorded by Barclays on the Acquisition Balance Sheet serve to understate the value of Barclays' Windfall rather than overstate the value of Barclays' Windfall as Professor Pfleiderer states in his report.

36. Professor Pfleiderer incorrectly opined that:

> Because the applicable accounting standards do not permit recognition of some economically important factors such as the sheer size (and consequent illiquidity) of the positions, which in this case would have made the "fair value" of many positions difficult or impossible to realize in an actual sale, these **"fair values" likely overstate the actual economic value of the acquired trading assets** and should be viewed as stating an upper bound on the range of actual economic value.[46]

37. Professor Pfleiderer further stated:

> Importantly, there are additional factors that may be relevant to understanding the economics of the Transaction that are not reflected in exit/bid prices developed by Barclays. These are not "fire sale" prices, nor are these "bulk" prices that take into account either the size of individual positions or the overall size of the transaction. (As I mentioned before, it is my understanding that applicable accounting rules do not allow these factors to be taken into account for purposes of developing "fair value" estimates of asset values of the type set forth in Barclays' acquisition accounting statement.) These factors, had they been taken into account, would have led to lower marks and to a lower assessment of the value of the trading assets acquired by Barclays. Importantly, these considerations would be relevant to an economic assessment of what Barclays received. Thus, the "fair value" valuation of the securities and assets Barclays received from Lehman in the Fed Replacement Repo at Barclays exit price marks is an upper bound on the reasonably estimated value of those assets.[47]

38. Professor Pfleiderer's opinions appear to ignore the relevant accounting rules, such as IFRS 39 ¶48A, which explicitly states: "The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It

[45] SFAS 157 *Fair Value Measurements*, ¶7. For similar references to exit price see SFAS 157 Summary and SFAS 157 ¶16, 17, 30, A2, A8, A27, C13, C16, C21, C23, C26, C29, C52, C63, C84.
[46] Pfleiderer Report, Footnote 40 (emphasis added).
[47] Pfleiderer Report, ¶59.

incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments."[48]

39. Fair value measurement methods do not stipulate that exit price marks establish the upper bound on the economic values. To the contrary, relevant accounting principles require the preparer to incorporate all factors that market participants would consider when measuring the exit price marks.

40. In addition to the understatement to the Barclays Windfall caused by the fair value methods used in the Acquisition Balance Sheet, Barclays' inconsistent and subjective use of its methods intended to establish exit price marks further understates the value of Barclays' Windfall.

Opinion 2(b): Barclays Inconsistently and Subjectively Applied the Methods Used to Mark Securities from Mid to Bid in the Acquisition Balance Sheet.

41. This opinion describes various inconsistencies and flaws in the methods Barclays employed in measuring the securities included in the Acquisition Balance Sheet. In addition, I alert the court that Professor Pfleiderer either ignores these flaws and inconsistencies in his analysis or accepts them without any analysis or consideration of the effects of such information on his opinions.

42. In some cases, Barclays computed exit price marks by adjusting the mid-value (the midpoint between bid and ask prices) by what it called a "bid-offer adjustment," which was computed as half of the spread between the bid and ask prices. Subtracting the bid-offer adjustment from the mid-value results in a hypothetical price Barclays would receive if it sold the asset. Patrick Clackson described how Barclays determined bid prices in the Acquisition Balance Sheet:

> So for some things you would be able to see bid offer quotes on things for those markets at that point in time, and where those are available those are what we used. For more illiquid markets you would have to try and look at trades or trades near that date to try and work out what the right bid price for those assets were.

[48] IAS 39, ¶48A (emphasis added.) (cited in Appendix III of this report).

> As I said, it was a lot of work done, which is partly why it took a lot of time to complete the acquisition balance sheet.[49]

A. GENERAL INCONSISTENCIES AND SUBJECTIVITY IN BARCLAYS' MID TO BID ADJUSTMENTS IN THE ACQUISITION BALANCE SHEET.

43. This section documents how Barclays deviated without any explanation, reason or support from its own alleged mid to bid adjustment policy and procedure.

44. In an e-mail to PwC, Mark Washtell of Barclays claims: "The methodology is consistent with the firms [*sic*] provisioning policy statement which states we can apply bid-offer [discount] at portfolio level rather than instrument by instrument."[50] In the same e-mail Mr. Washtell admits Barclays' subjective application of the purportedly compliant method: "**Most of what we do is subjective to some degree**, this is not the only example, and **we regularly use our experience to recommend the most appropriate approach in such circumstances**, this is no different."[51]

45. Similarly, Mr. Clackson described the process for updating the asset valuations once the assets were recorded:

> We do different things for different portfolios. So for some portfolios we revalue them daily at midmarket, and then we have a bid offer adjustment across the whole portfolio. For other portfolios we may value individual positions on bid and offer. More normally I think for the bigger portfolios we have a bid offer adjustment across the portfolio and we use a similar mechanism to work out what that should be.[52]

46. Exhibits 86B, 87B and 641A (which support the Acquisition Balance Sheet amounts for Schedules A and B, and for Annex A, respectively) each include a tab called "liquidity" which contains a table of "haircuts" for various asset classes. These tables represent Barclays' purported bid-offer adjustments for each asset class and security type. However, Barclays did not apply the liquidity haircuts uniformly to each asset class.[53]

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[49] Deposition of Patrick Clackson, September 4, 2009, 144:17 – 145:2.
[50] BCI-EX-00248365-79, at BCI-EX-00248368 (underline in the original).
[51] BCI-EX-00248365-79, at BCI-EX-00248368 (emphasis added).
[52] Clackson Dep., 145:11-19.
[53] *See* Clackson's testimony related to Barclays' determination of bid prices in the Acquisition Balance Sheet. (Clackson Dep., 145:11-19). A review of Exhibits 86B and 87B confirms Clackson's statement and Barclays' inconsistent valuation adjustments within asset classes. For example, regardless of asset class, Barclays applied no liquidity discount to Annex A securities with unit price lower than $10.00. (*See* if-

47. In several instances the "market value w/ liquidity" table comingles the liquidity discount on a position with a price adjustment Barclays arbitrarily applied by choosing a valuation date other than September 19 or September 22, 2008.[54] Professor Pfleiderer's testimony is relevant:

> And whenever Barclays in those cases had an initial mark as they oftentimes did, and then a sale transaction that occurred very shortly thereafter, they took the sale transaction rather than the initial mark with the liquidity adjustment as the -- as the value to be assigned for that particular CUSIP. [55]

B. BARCLAYS INCONSISTENTLY AND SUBJECTIVELY APPLIED THE METHODS USED TO MARK LEHMAN'S EQUITY POSITIONS FROM MID TO BID IN THE ACQUISITION BALANCE SHEET.

48. In an email to PwC dated December 12, 2008, Barclays described a purported 1.32% bid-mid spread adjustment to Lehman's equity positions:

> The values that we receive for the Equity prices are based on last traded. For simplicity we have assumed that these are mids and so we need to make an adjustment to move these to the bid side of the market. A more conservative assumption would be that the prices are offers (which is [*sic*] a rapidly falling market is probably more realistic) which would obviously lead to a larger adjustment.
> Based on an analysis of the securities we were able to obtain bid/offer spreads for about 2100 of the 3700 securities which had an average bid/offer of 2.64%. This again would be a conservative estimate as the securities with a quoted bid offer would most likely be the most liquid and hence trading at the tightest spreads. The mid to bid spread would then be 1.32% leading to a mid-bid adjustment of $132 mm or an offer to bid adjustment of $264mm.[56]

49. In practice, Barclays applied arbitrary bid-offer adjustments. Specifically, Barclays applied a 4.32% (and not the 1.32%) bid-offer adjustment to the value of equities.[57] This 4.32% bid-offer adjustment Barclays applied is incorrectly computed.

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statement formula in column W, tab "Portfolio 3" in the native file format of Exhibit 87B (BCI-EX-00108700.xls).

[54] My Opinion 2(c) (below) addresses Barclays' non-compliant and arbitrary choice of alternative valuation dates.

[55] Deposition of Professor Paul Pfleiderer, February 23, 2010, 111:3-12. (emphasis added)

[56] BCI-EX-00218502-503, at BCI-EX-00218503.

[57] This was derived by computing the spread as of December 18, 2008 and deriving the implied spread as of September 22, 2008. The implied spread was based on the change in spread over that time frame for securities for which spread data was available on both dates (0922 Equities Bid-Offer (BCI-EX-00255172).xls).

C. BARCLAYS INCONSISTENTLY AND SUBJECTIVELY APPLIED THE METHODS USED TO MARK THE EXCHANGE TRADED OPTIONS (ETO) PORTFOLIO FROM MID TO BID IN THE ACQUISITION BALANCE SHEET.

50. Barclays intended to apply the following method to adjust the valuation of exchange traded options ("ETO"):

> In principle, we [Barclays] value long positions at bid and value short positions at ask. In practice, we [Barclays] value a position in the following formula:
>
> Net Valuation = mid-value + bid-value
>
> = position*(bid+ask)/2*100 – abs[position*(ask-bid)/2*100]
>
> where position is positive (negative) if long (short, resp.).
>
> Please note that the formula exactly reflects the principle. The advantage of this formula provides us a way to better estimate the bid-mid value in order to minimize the data noise in the market.[58]

51. In practice, Barclays employed multiple valuation methods to ETOs leading to exceptions and inconsistencies when calculating the mid-to-bid adjustments in the Acquisition Balance Sheet. Specifically:

- For positions with no independent pricing data, Barclays used the ADP prices[59] as ask and generated a bid based on the formula:[60]

  Bid = Max [ask*(1-95%), $6]

  Barclays' choice of ADP prices as a proxy for ask prices is unsupported. The record is unclear whether the ADP prices were *bid*, *ask* or *daily closing* prices and how frequently the ADP prices were updated. In addition, Barclay's choice of $6 as a parameter in the formula is subjective and unsupported.

- When applying its net valuation adjustment for ETOs, Barclays used different dates for the bid-mid value and mid-value inputs for the same computation. Specifically, Barclays used mid-value ($509 million) as of end-of-day ("EOD") on September 22, 2008 and bid-mid value ($531 million) as of EOD on September 19, 2008 in the same net valuation.[61] Regardless of whether September 19th or September 22nd is the proper measurement date, if Barclays

[58] BCI-EX-(S)-00110233-38, at BCI-EX-(S)-00110237.
[59] I understand that Automatic Data Processing, Inc. (ADP) served as pricing-data repository for Barclays.
[60] BCI-EX-(S)-00110233-38, at BCI-EX-(S)-00110237.
[61] BCI-EX-(S)-00110233-38, at BCI-EX-(S)-00110237-38.

performed the same net valuation and used both the mid-value ($509 million) and the bid-mid value ($352 million)[62] as of EOD on September 22, 2008, the net valuation of Barclays exchange traded option portfolio would have been $861 million rather than $1,040 billion. This inconsistency again understates Barclays Windfall.

D. BARCLAYS INCONSISTENTLY AND SUBJECTIVELY APPLIED THE METHODS USED TO MARK ITS AGENCY CMO PORTFOLIO FROM MID TO BID IN THE ACQUISITION BALANCE SHEET.

52. Barclays' PCG applied a ten percent bid-offer discount to Agency Collateralized Mortgage Obligations ("Agency CMO") "to appropriately measure the market uncertainty and potential valuation adjustments resulting from more observable data."[63] PCG rationalized the ten percent discount to PwC (i) by comparing differences in observable pricing indicators from "various sources" at the bond level, and (ii) by analyzing a trade sample of 39 agency bonds that had a buy and a sell on the same day.[64]

53. The PCG rationalization for the ten percent discount on Agency CMOs is subjective and unsupported. PCG incorrectly used an intra-day trading range (i.e. the spread between "a buy and a sell on the same day")[65] as a proxy for bid-ask spread, which is measured using trading prices as of the exact same instant in time. Using intraday trading ranges instead of bid-ask spreads introduces bias in PCG's measure of the bid-offer discount for Agency CMOs.

54. PCG incorrectly applied the same 10% liquidity discount to the whole Agency CMO portfolio. A review of the limited sample of 39 CUSIPs that Barclays used proves that the Agency CMOs have significantly different risk profiles and daily trading patterns. One half of the sample had intraday trading ranges of 15.92% to 23.93%. The second half of the sample had intraday trading ranges of 0.03% to 1.48%.[66] Barclays had no basis in applying the same 10% across the whole Agency CMO portfolio, without further investigating the risk characteristics and the trading profiles of the Agency CMO securities.

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[62] BCI-EX-(S)-00110233-38, at BCI-EX-(S)-00110238.
[63] BCI-EX-00248415-58, at BCI-EX-00248415.
[64] BCI-EX-00248415-58, at BCI-EX-00248415.
[65] BCI-EX-00248415-58, at BCI-EX-00248415.
[66] BCI-EX-00248415-58, at BCI-EX-00248416 (see column "B/O %").

E. PROFESSOR PFLEIDERER EITHER IGNORES THE INCONSISTENCIES AND SUBJECTIVITY IN BARCLAYS' MID TO BID ADJUSTMENTS IN THE ACQUISITION BALANCE SHEET IN HIS ANALYSIS OR ACCEPTS THESE FLAWS AND INCONSISTENCIES WITHOUT ANY ANALYSIS OR CONSIDERATION OF THE EFFECTS OF SUCH INFORMATION ON HIS OPINIONS.

55. In his report Professor Pfleiderer stated:

> Adjustments of mid-point marks to bid-quote levels was intended to assure that the valuations used in Barclays' financial statements were computed at "exit prices" that reflected what Barclays likely would receive in an orderly sale of the assets in question, as I understand is required by applicable accounting standards.[67]

56. Professor Pfleiderer further stated:

> Barclays typically reduced mid-point prices for ALT-A mortgage backed securities by 10% or 15% to adjust them to exit prices, with the size of the adjustment varying across different types of ALT-A products. [68]

57. At his deposition, Professor Pfleiderer acknowledged the exceptions, inconsistencies and subjectivity Barclays applied when making the mid to bid adjustments:

> It was not the case that the haircut was uniformly applied to securities based upon type. And one example where that's not true are [*sic*] the corporate securities, ones that are labeled "corporate".
>
> * * *
>
> [N]o liquidity discount is being taken off of that on the spreadsheets that are related to liquidity discounts. Rather what is done is keying off of the minimum of the various quotations that were obtained.
> So what that means, of course, is that within the class of corporate securities, it is not the case that a uniform treatment is being applied in terms of a percentage reduction because it's based upon actual quotations that are coming from the market.
>
> * * *
>
> [A]nd there were asset classes where it was generally the case that a haircut, liquidity haircut is what I believed they called it at time, was applied generally across CUSIPs. But there were exceptions to that. So I would have to go back and look to see if there were any asset classes for which all of the CUSIPs within that class -- and that would include the initial inventory and the J.P. Morgan

[67] Pfleiderer Report, ¶51(9).
[68] Pfleiderer Report, Footnote 100.

> inventory. It was uniform across all of those because there were some exceptions.[69]

58. Professor Pfleiderer failed to analyze the impact of the incorrect and subjective mid to bid adjustments Barclays made.

Opinion 2(c): Barclays' Use of Valuation Dates after September 22, 2008 is not Supported by the Accounting Literature and Results in Understated Values for Certain Securities in the Acquisition Balance Sheet.

59. This opinion describes the flaws in the valuation date methods employed by Barclays in the Acquisition Balance Sheet and how Professor Pfleiderer accepted the flaws and inconsistencies with no discussion or analysis in his report.

A. <u>THERE IS NO SUPPORT IN IAS OR U.S. GAAP.</u>

60. IAS and U.S. GAAP instruct the acquirer to use the acquisition date as the measurement date when accounting for assets acquired in a business combination.[70] Gary Romain was fully aware of this reporting requirement: "[t]he measurement date is the acquisition date (Sunday 21 September – practically 19 September close)".[71] Yet, in the same email, Romain develops and applies his alternative theories of "practical control" and "substantive ability to transact," both of which are not referenced anywhere in US GAAP or IFRS.[72]

61. Barclays' use of alternate valuation dates other than the acquisition or measurement date (September 19, 2008) is unsupported and results in a lower valuation of assets in the Acquisition Balance Sheet and serves to increase Barclays' Windfall.

62. Paradoxically, Barclays applied judgment in choosing several different measurement dates to value the assets acquired, yet as of September 19, 2008, Barclays recognized the obligation for and began servicing liabilities related to the financial assets Barclays acquired from Lehman. For example, in a letter to the Commodity Futures

[69] Pfleiderer Dep., 27:5 – 29:23.
[70] IFRS 3, ¶24 (cited in Appendix III).
[71] BCI-EX-00218500-501.
[72] BCI-EX-00218500-501.

Trading Commission dated September 19, 2008, Archibald Cox, Chairman of Barclays Americas stated:

> [B]arclays will be responsible for any variation margin or other payment obligations due to derivatives clearing organizations on Monday, September 22, 2008, arising from positions in futures or options on futures carried in the accounts of LBI customers that are transferred to Barclays pursuant to the Agreement[73]

63. Similarly, the Transfer and Assumption Agreement between Barclays and the Options Clearing Corporation ("OCC") indicates that Barclays assumed the obligations related to the margin accounts at the OCC as of the acquisition date.[74]

B. THE VALUATION DATES CHOSEN BY BARCLAYS ARE INCONSISTENT AND UNSUPPORTED.

64. Barclays chose inconsistently and selectively and without regard to the accounting rules the dates on which to value certain securities. The dates chosen and the rationale used to support the decision are not well developed and lead to an understatement of Barclays' Windfall. Such subjectivity in Barclays' choice of measurement dates introduces managerial bias. It is unclear when in the minds of Barclays' management a subsequent sale loses its probative value with respect to the Acquisition Balance Sheet – is it 10 days, 30 days, 90 days, 180 days, or 365 days. Taken to an extreme, Barclays' choice of subsequent valuation dates could have extended to measurement dates as far as twelve months after the acquisition date which is not the spirit of the business combination accounting standards.

65. The Giants Stadium Bonds illustrate the effects of the arbitrary nature of Barclays' choice of valuation dates. Professor Pfleiderer describes the bonds issued by The New York Giants in Item 6 on Appendix Four to his report: "[a]ccording to Barclays' position detail spreadsheets, Barclays valued the Giants auction rate securities it acquired, for accounting purposes, at their indicated values using BoNY's marks (which ranged from about $10 per $100 of face value to about $44 per $100 of face value), without further downward adjustment."[75] Subsequently, on various dates from

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[73] BCI-EX-00258394.
[74] Exhibit 51.
[75] Pfleiderer Report, Appendix Four, Item 6, *Giants Stadium Bonds*, page 112.

April 28 through May 19, 2009, Barclays sold the Giants Stadium Bond positions and realized a cumulative gain of at least US$349,329,865.[76] Barclays chose not to use the subsequent sales price in this case to value the Giants Stadium Bonds in the Acquisition Balance Sheet but to use the lower BoNY mark to value the bonds in the Acquisition Balance Sheet.[77]

C. THE OPINIONS OFFERED BY PROFESSOR PFLEIDERER REGARDING THE USE OF SUBSEQUENT MEASUREMENT DATES ARE FLAWED.

66. Professor Pfleiderer appears to understand how subsequent events and market movements affect the fair value of an asset. Discussing his hypothetical example at paragraph 66 of his report, Professor Pfleiderer correctly concludes that the $200,000 price a classic automobile attains in an auction "says little or nothing" about "whether the buyer in the original transaction paid fair value for the car six months ago."[78]

67. However, Professor Pfleiderer fails to consider the effects of subsequent events or market movements on the trading portfolio assets Barclays acquired from Lehman from the acquisition date to the subsequent date of sale. For example, when discussing how Barclays recorded the "125 different CMOs" with "aggregate indicated value of $237.7 million" (at BoNY marks), Professor Pfleiderer states: "Because these positions were sold off quickly, Barclays did not finalize September 22 exit price marks for these positions, but **instead valued them for financial accounting purposes at their actual sales value**."[79] Professor Pfleiderer accepts Barclays' choice of valuation date without any analysis or discussion of the accounting rules. He does not examine how the subsequent sale prices for the collateralized Alt-A securities differ from their respective fair values as of the acquisition date.

68. Similarly, in his deposition testimony Professor Pfleiderer acknowledged Barclays' choice of alternative valuation dates for PMTG assets as follows:

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[76] BCI-EX-00297320 (a native format document produced by Defendants in support of Exhibit 533-A).
[77] BCI-EX-00297320 (a native format document produced by Defendants in support of Exhibit 533-A) and BCI-EX-00295932-33 (Dep. Ex. 533A), (showing a reduction of the four Giants Stadium Bonds held by Dec-31-2008 of $102,000,000 and a gain of $349,329,865). The actual transactions between Sep-19-2008 and Dec-31-2008 that resulted in these gains were not produced in discovery.
[78] Pfleiderer Report, ¶66.
[79] Pfleiderer Report, Appendix Four, Item 1, *Collateralized ALT-A mortgage obligations issued by Structured Adjustable Rate Mortgage Loan Trust*, at 107.

> [W]henever Barclays in those cases had an initial mark as they oftentimes did, and then a sale transaction that occurred very shortly thereafter, they took the sale transaction rather than the initial mark with the liquidity adjustment as the value to be assigned for that particular CUSIP. And if we open up that spreadsheet, I can show you numerous examples.[80]

69. Moreover, Professor Pfleiderer appears to ignore the fact that many of the sale prices were realized from internal transfers that may not represent arms-length transactions. In fact, many of the alleged "subsequent sales" represent internal transfer prices among Barclays' related trading entities at prices influenced by Barclays' management. Such internal transfer prices warrant additional testing and verification before serving as proxies for fair value.

70. Professor Pfleiderer also repeatedly stated in his report and deposition that he is not a Certified Public Accountant ("CPA") and that he was not qualified to interpret accounting rules. Yet in his deposition, Professor Pfleiderer indicated that the use of the subsequent sale price as a proxy for an exit price in the Acquisition Balance Sheet was correct.[81] Professor Pfleiderer's statements in his deposition are logically inconsistent with the assertions in his report. In addition, Professor Pfleiderer provides insufficient foundation and insufficient evidence to support his testimony. Professor Pfleiderer admits that he is not a CPA and not qualified to interpret the rules while at the same time he opines that the methods and judgments made by Barclays are correct from a financial accounting perspective.

Opinion 3: Professor Pfleiderer's Evaluation and Reliance on PwC's "Extensive" Testing of Barclays' Exit Price Marks are Flawed.

71. This section analyzes the flaws in Professor Pfleiderer's reliance on the "extensive investigation and testing of Barclays exit price marks by PwC." As highlighted below, Professor Pfleiderer's assumptions and assertions regarding PwC's procedures lack foundation and appear to be predicated on an incomplete analysis and insufficient understanding of the facts.

[80] Pfleiderer Dep., 111:3-12.
[81] Pfleiderer Dep., 89:13-90:17, 110:7-113:23, 131:3-133:9

A. PROFESSOR PFLEIDERER DID NOT EVALUATE PWC'S TESTING PROCEDURES.

72. In Paragraph 51(12) to his report, Professor Pfleiderer concludes that "PriceWaterhouseCoopers conducted an extensive audit of Barclays' final summary of the Acquisition, which included extensive investigation and testing of Barclays exit price marks." Similarly, in his deposition Professor Pfleiderer includes several references describing his reliance on the PwC reviews.[82]

73. In his report, Professor Pfleiderer does not provide the basis for his opinion regarding the extensiveness and reliability of PwC audit procedures. He does not provide any evaluation of the procedures PwC performed and does not assess nor identify which PwC procedures meet his definition of "extensive audit." In addition, in his deposition, Professor Pfleiderer admitted that his understanding of the "thorough review" PwC performed of Barclays' procedures is based on hearsay or perhaps on a telephonic conversation.[83]

B. PROFESSOR PFLEIDERER'S RELIANCE ON PWC'S "EXTENSIVE" TESTING OF BARCLAYS' EXIT PRICE MARKS IS UNSUPPORTED.

74. Professor Pfleiderer does not provide any analysis of his understanding of the professional responsibilities of PwC regarding its audit of Barclays' Acquisition Balance Sheet. He does not analyze the audit assertions PwC is making in its engagement for Barclays nor does he provide any analysis or explanation for many of the misstatements and aggressive judgments utilized by Barclays in the Acquisition Balance Sheet.

75. Professor Pfleiderer's opinion regarding the "extensive investigation and testing of Barclays exit price marks by PwC" is not supported by a review of the procedures documented in the PwC work papers and made available to Professor Pfleiderer at the time he included this opinion in his Pfleiderer Report.

76. Appendix V presents an overview of the audit process. Appendix VI summarizes the relevant standards and guidance auditors should consider when auditing fair value measurements and disclosures.

[82] Pfleiderer Dep., 253:25-254:8, 260:3-10, 322:5-11.
[83] Pfleiderer Dep., 260:11-24.

C. REVIEW OF THE PWC WORKPAPERS PROFESSOR PFLEIDERER RELIED UPON.

77. Counsel for Defendant Barclays identified that Professor Pfleiderer relied on data and documents in BCI-EX-00247453 – BCI-EX-00295654 to arrive at his conclusion regarding the "extensive audit" PwC performed.[84]

78. I reviewed the PwC production Professor Pfleiderer relied upon (BCI-EX-00247453 – BCI-EX-00295654) and noted that PwC performed extremely limited tests of Barclays exit price marks recorded on Barclays Acquisition Balance Sheet.[85] PwC testing of Barclays' exit price marks, as documented in BCI-EX-00247453 – BCI-EX-00295654, was limited to:

- Collecting emails that documented Barclays' procedures;
- Collecting from PCG price changes of JPM securities from December 22 to December 30, 2008;
- Checking for arithmetic accuracy;
- Annotating a draft acquisition balance sheet;[86]
- Confirming par values (and not fair values) for small samples of securities or positions;[87]
- Verifying with Bloomberg the imputed interest on a small-sample (15 out of 8,839 positions) of acquired securities;

[84] Letter from Jonathan W. Davenport, dated February 6, 2010, ¶3(k). The range BCI-EX-00247453 – BCI-EX-00295654, specified in Davenport's letter, corresponds to data and documents produced on two disks (Disk 9 and 10) as part of a larger production by Defendants in January 2010.

[85] PwC workpapers document other testing procedures not related to testing the valuation of the financial assets acquired. Some of these unrelated procedures, PwC performed include:

- Cash balance and bank reconciliations,
- E&Y workpapers testing the cash-flow based valuations of real estate,
- PwC testing of fixed assets and E&Y schedules of Fixed Asset contributory charges,
- PwC cash reconciliation, E&Y assembled workforce workpapers and PwC bonus testing,
- Customer relationship valuation tests,
- Testing internal controls and account balances over PIM and 15c3 customer accounts,
- Testing system capabilities, data transfers and functionality for Lehman's legacy information technology systems, and
- Testing of FTD (failed-to-deliver) and FTR (failed-to-receive) trade exceptions

[86] BCI-EX-00248592

[87] BCI-EX-00249452.xls (*PwC Testing-Additional Securities* produced in native file format).

- Testing the 12/31/2008 prices of 886 CUSIPS of additional unencumbered assets: equities, corporate bonds, municipal bonds and one CMO (DLJ Mortgage Acceptance);[88] and
- Testing a sample at 12/31/2008 (40 out of 161) PL1 Municipals America GQE positions – PwC tested price versus S&P, FTID, MSRB, SCPG, GFS.[89]

79. All of the tests above used Bloomberg and S&P as pricing benchmarks. I was not able to find any independent valuation model or logarithm that PwC used to test Barclays' exit price marks.

80. The documents Professor Pfleiderer alleges he reviewed while preparing his report do not seem to support his conclusion that PwC undertook an "extensive investigation and testing of Barclays' exit price marks". Professor Pfleiderer's assertions in his report are flawed and lack sufficient foundation as illustrated by his understanding of audit work undertaken by PwC and his conclusion regarding PwC's "extensive investigation and testing of Barclays exit price marks".

D. REVIEW OF THE PWC WORKPAPERS PRODUCED AFTER PROFESSOR PFLEIDERER FILED HIS REPORT

81. On February 12, 2010, PwC produced additional documents, hereafter referenced as "the February 12, 2010 PwC production."[90]

82. While PwC performed certain procedures, it is not clear whether an extensive investigation and testing was performed. "An extensive investigation and testing of Barclays exit price marks" includes

- Examination of evidence regarding the existence of a right on an asset;

[88] BCI-EX-00255181.xls (*New LBI Firm Asset List A 12312008 FINAL* produced in native file format).
[89] BCI-EX-00258590.xls (*Lehman Cash Muni Price Testing 20081231 PwC* produced in native file format)
[90] *See* Letter from Martine M. Beamon (Davis Polk & Wardwell LLP) to William J. Hine, dated February 12, 2010, describing the PwC production to include documents bearing production numbers PwC-BarCapWP 000000001 – 00128004. The documents produced in the February 12, 2010 production "include (1) documents from the section of the electronic PwC LLP audit workpaper database related to the work performed in connection with the Lehman acquisition, (2) external workpaper documents corresponding to those electronic workpapers, and (3) emails collected from seven custodians for the time period between September 12, 2008 and March 31, 2009." Footnote one to this letter lists the seven custodians: Michael Guarnuccio, Paul Lameo, Robert MacGoey, Jalen Tan, Eric McGuinn, Lissette Palacios and Norbert Porlein.

- Inspection of the facilities, such as the Giants Stadium or architectural drawings, building site thereto;
- Documentation of the reasonableness of management assumptions and models used for deriving Barclays measures of fair value and independent assessments of the fair values Barclays derived;
- Selection and testing of a sample of appropriate size and characteristics from the eleven thousand securities Barclays acquired from Lehman (evaluate additional sampling requirements for Level II and Level III securities which represent greater audit risks);
- Analysis of the contractual documents for each security valued to understand its characteristics such as: (1) structure of the security and it tranches, (2) the priority of cashflow distributions, (3) the events triggering default of additional margin requirements;
- Construction of cash flow scenarios and alternative scenarios based on varying market inputs (e.g. prepayment rates, default rates, mortality rates; interest rates and expected interest rate; political risk for government bonds).

83. Based on my review of the PwC procedures performed on Barclays' exit price marks (as documented in the February 12, 2010 PwC production), PwC most likely did not perform an extensive investigation and testing in light of the following deficiencies in the valuations included in Barclays' Acquisition Balance Sheet:

- Pine CLO:
  - Without reviewing the underlying deal documents and without testing or investigation, PwC accepted Barclays' incorrect valuation of the Pine CLO. In deriving its valuation, Barclays failed to recognize the inverted structure of the CLO and its own senior position within that structure. This means that Barclays itself failed to recognized that in the Pine structure, Barclays' senior Class A-1 position was fully funded and not responsible for any additional cash contributions that could arise from additional funding requests from the underlying borrowers.

- Barclays incorrectly assumed a 70% probability that Barclays, as the holder of the Class A-1 tranche, would be obligated to fund the entire amount of the remaining balance available to be drawn upon by the underlying borrowers. Barclays also failed to recognize, as provided in the deal documents, that Lehman, a bankrupt entity, would be responsible for providing any additional funding. Barclays incorrectly assigned a "ZERO" probability to the most likely outcome that the Pine Trustee or the Lehman Bankruptcy Trustee or both, post Lehman bankruptcy, would prevent the funding of any additional advances due to the Lehman bankruptcy.

- Barclays, as the holder of the class A-1 tranche, would have first claim on the assets of the CLO, which according to Barclays, included $367 million of cash investments and $697 million of funded loans. Barclays valued this cash and loans totaling $1,064 million at $428.6 million (or at a price of 40.3 cents on the dollar). Had Barclays properly recognized the structure of Pine, and left all of Barclays' other valuation assumptions, probabilities and scenarios the same, Barclays' valuation would have been significantly higher.[91]

- Barclays' PCG applied a ten percent bid-offer discount to Agency Collateralized Mortgage Obligations ("Agency CMO") "to appropriately measure the market uncertainty and potential valuation adjustments resulting from more observable data."[92] PCG rationalized the ten percent discount to PwC (i) by comparing differences in observable pricing indicators from "various sources" at the bond level, and (ii) by analyzing a trade sample of 39 agency bonds that had a buy and a sell on the same day.[93] The PCG rationalization for the ten percent discount on Agency CMOs is subjective and supported by an incomplete analysis. Certain buy and sell quotations for the select securities appear to be from different periods of the day and not from

[91] Expert Report of Mark E. Slattery, CFA filed in this litigation on March 15, 2010, at 22.
[92] BCI-EX-00248415-418
[93] BCI-EX-00248415-418

the same trading instant. Such buy and sell quotations serve to approximate the intraday trading range for a security and not the bid-ask spread.

- Barclays applied a five percent "liquidity discount" to notes that were maturing within days of the acquisition date or exhibited risk profiles inconsistent with Barclays discounting. Such unwarranted liquidity discounts resulted in exorbitant yields on specific Barclays' discount notes. For example, CUSIP RTD019828 resulted in an implied yield of 643.4% on a $50 million bond three days prior to the bond's maturity. Similarly, CUSIP RTD019885 resulted in an implied yield of 276.8% seven days prior to its maturity. Cumulatively, the yield analysis of the discount notes resulted in approximately $140 million understatement of Barclays Acquisition Balance Sheet.[94]

- Barclays relied on aggressive and unsupported concepts of control by using Romain's theories of "practical control" and "substantive ability to transact" as a premise to support subsequent valuation dates for the securities Barclays acquired from Lehman. The valuations resulting from the subsequent valuation dates serve to understate Barclays Windfall.

- Barclays PCG used proxies (Lehman CDS) for an actively traded instrument (Lehman commercial paper) with recorded prices (on the TRACE system).[95] Specifically, on September 22, 2008, Barclays PCG remarked $2.2 million of Lehman commercial paper "positions at 9.5%, using Lehman CDS as a proxy for senior unsecured recoveries." Lehman senior unsecured bonds were actively trading with recorded prices on the TRACE database. The TRACE database was developed by FINRA and dealer adherence to timely reporting is regulated by the SEC. Barclays PCG approach to approximate Lehman bond prices with Lehman CDS was unwarranted and allowed Barclays PCG to apply managerial judgment and introduce bias in valuing an instrument with an observable price.

[94] Expert Report of Mark E. Slattery, CFA filed in this litigation on March 15, 2010, Table 4 "Yield Analysis of Discount Notes".
[95] PwC-BarCapWP_00022935-48, at PwC-BarCapWP_00022943.

- Barclays asserted that "Utilizing vendor pricing including BONY, Bloomberg or other sources provides a reasonable basis for the Company's estimation of fair value." [96] The record indicates that Barclays inconsistently and subjectively applied this pricing procedure in estimating fair value. For example, Barclays recorded CUSIP 656533AA4 and CUSIP 458204AD6 in the Acquisition Balance Sheet at prices different from the BoNY marks. Specifically, Barclays recorded CUSIP 656533AA4 (with nominal principal value of $62,346,775 and BoNY mark of $55,319,670) in the Acquisition Balance Sheet at $49,715,318.[97] Similarly, Barclays recorded CUSIP 458204AD6 (with nominal principal value of $15,000,000 and BoNY mark of $12,825,000) in the Acquisition Balance Sheet at zero.[98] These are just two examples of securities that were recorded in the Acquisition Balance Sheet using procedures that deviated from Barclays' stated policy.

- Barclays PCG appears to have made an aggressive valuation of the Giants Stadium Bonds in the Acquisition Balance Sheet. [99] PwC wrote: "Utilizing vendor pricing including BONY, Bloomberg or other sources provides a reasonable basis for the Company's estimation of fair value." Barclays PCG subjectively chose to use BONY prices for the Giants Stadium bonds despite e-mails, attached to the Summary indicating that Barclays substantially moved the price marks in October – one month following the transfer of the bonds to Barclays. Further, in its price testing, PwC seems to indicate a non-investment grade rating for Giants Stadium LLC resulting in a deeply discounted price. For example, the memo[100] states that the monoline insurance provider for the securities transferred to Barclays is rated CC (i.e. non-investment grade) but Moody's provided an independent "stand-alone" rating of Baa3 to these Giants Stadium LLC bonds on September 17, 2008 and no longer rated the series of notes held by Barclays at the non-investment grade rating of the

[96] PwC-BarCapWP_00022935-48, at PwC-BarCapWP_00022943.
[97] BCI-EX-00099519.xls – produced in native file format, see tab [Corps], row 326.
[98] BCI-EX-00099519.xls – produced in native file format, see tab [Corps], row 202.
[99] PwC-BarCapWP_00022935-48, at PwC-BarCapWP_00022943.
[100] PwC-BarCapWP_00022935-48, memo "Giants Stadium – Description of Movem" embedded at PwC-BarCapWP_00022943.

monoline insurer. It is hard to understand how PwC accepted the deeply discounted price and the non-investment grade rating in light of all the information available at the time the Giants Stadium valuation was made.

- PwC accepted without further investigation Barclays' inconsistent accounting treatment of assets with similar economic characteristics. PwC agreed with Barclays' incorrect recoding of a redeemed bond at par while at the same time recording a matured bond at zero or no value. Specifically, PwC agreed that Barclays reasonably priced a bond CUSIP 74256AA1 – that was called (i.e. redeemed by the issuer) – at Par or full principal value.[101] Yet, PwC also agreed that Barclays reasonably price three investment-grade bonds[102] and four high-yield bonds[103] that matured at zero or no value. The economic impact to the holder of the bond is the same in both cases (redemption by issuer or maturity) in that the holder received prior to 12/22/2008 all of the principal and interest due from the investment.

- PwC concluded, with respect to a high-yield bond that "The fifth position, CUSIP 8265Q0YD8, is in default, therefore, a price of zero does not appear unreasonable."[104] In general, however, a bond that has defaults still has a recovery value and should be valued to reflect such recovery value. Yet, PwC accepted the price of zero without performing additional tests of the potential recovery value of CUSIP 8265Q0YD8.

Opinion 4: Professor Pfleiderer is Misguided in His Analysis of the Negative Goodwill Barclays Recorded.

84. Professor Pfleiderer's analysis of Barclays reported negative goodwill "of approximately $2 billion, post tax"[105] is misguided and flawed for several reasons.

85. Professor Pfleiderer argues that there is only $0.5 billion of the negative goodwill(gain) on financial assets and this calculation results in "very close to a

[101] PwC-BarCapWP_00023570-76, at PwC-BarCapWP_00023575.
[102] PwC-BarCapWP_00023570-76, at PwC-BarCapWP_00023575.
[103] PwC-BarCapWP_00023570-76, at PwC-BarCapWP_00023576.
[104] PwC-BarCapWP_00023570-76, at PwC-BarCapWP_00023576.
[105] Pfleiderer Report, ¶5(c).

mathematical wash"[106] when excluding any gains associated with the exchange and non-financial assets. That is, Professor Pfleiderer contends that the repo transaction was a wash as consummated. This analysis is misguided for several reasons.

86. The accounting model for business combinations looks at the transaction in total when valuing assets and liabilities acquired [107] Pfleiderer's arbitrary exclusion of gains on non-financial assets is flawed and not a proper determination of negative goodwill in this transaction.

87. In addition, Professor Pfleiderer contradicts his own calculation in his report when he states: "It is an important fact that Barclays did not acquire the Repo Collateral in a separate, standalone transaction, but instead acquired these assets as part of a larger bundle of assets and liabilities associated with LBI's North American broker-dealer businesses. This means, first, that there was no separate identifiable 'price' paid by Barclays for the trading portfolio securities and, second and more specifically, that the $45 billion that Barclays lent to LBI in the Fed Replacement Repo should not be viewed as the 'price' Barclays paid for the Repo Collateral."[108]

88. Second, Professor Pfleiderer concludes that it is appropriate to exclude the $2.1 billion gain on positions at exchanges from his negative goodwill analysis because Barclays "neither knew *nor could have known or even roughly estimated* the net value of these accounts at the time of the Sale Hearing."[109] This determination again is misguided. Barclays' inability to assess the value of an asset at the precise moment of the Sale Transaction has no bearing in either U.S. GAAP or IFRS[110] nor does it comport with the fact that Barclays determined and reported in their financial statements that they recognized a $2.1 billion pre-tax gain on these same assets. The accounting rules contemplate that this type of risk, perceived or otherwise, could arise and directs the financial statement preparer to assess both the value of the collateral and the value of the associated liabilities rather than ignore the value of the assets and liabilities. The

[106] Pfleiderer Report, ¶116.
[107] IFRS 3, ¶IN7(c) (cited in Appendix III of this report).
[108] Pfleiderer Report, ¶10.
[109] Pfleiderer Report, ¶117 (emphasis as shown).
[110] IFRS 3, ¶44.

associated risk is one more item that must be evaluated in making a determination of the fair value of the assets and liabilities acquired in a business combination.[111]

89. Finally, Professor Pfleiderer also attempts to exclude the negative goodwill (gain) associated with other categories of assets acquired, including intangibles in his attempt to demonstrate that the sale as consummated was a wash.[112] Excluding the real property[113] Barclays acquired additional assets of approximately $2.08 billion comprised primarily of intangibles, furniture and other assets.[114] Intangibles included the use of Lehman's name for two years, customer lists, relationships, and a variety of other assets.[115] However, total consideration for all these non-financial assets was $250 million. This results in a negative goodwill (gain) of $1.83 billion ($2.08 - $0.25). This calculation is improper because these assets, like the other enumerated assets, were contemplated in the APA and representations made to the Court. They should not be considered separately when determining the amount of negative goodwill associated with the Sale transaction.[116] In any event, and as demonstrated in Professor Zmijewski's Report, Barclays' negative goodwill on the transaction as consummated was far greater – Barclays' Windfall was at least $13.051 billion.[117]

Submitted by:

John P. Garvey
March 15, 2010

[111] IAS 39, ¶48A.
[112] Pfleiderer Report, ¶116.
[113] Each of the three buildings Barclays acquired from Lehman was valued by at least one independent appraiser. Specifically, CB Richard Ellis ("CBRE", PwC-BarCapWP_00042693-808) and Cushman & Wakefield (PwC-BarCapWP_00042671-692) independent of each other appraised the *745 Seventh Avenue* building. Barclays recorded that property at the average of the two valuations (PwC-BarCapWP_00042499-502). CBRE independently appraised the value of the *40 Corporate (Piscataway)* property (PwC-BarCapWP_00042583-670) and the *27 Commerce (Cranford)* property (PwC-BarCapWP_00042504-82). Barclays recorded these properties at their appraised values in the Acquisition Balance Sheet (PwC-BarCapWP_00042499-502).
[114] Exhibit 377A.
[115] Report by Ernst & Young LLP, dated January 30, 2009, titled "Valuation advisory services related to the acquisition of certain assets of Lehman Brothers Holdings, Inc." (BCI-EX-00292153 – 2237).
[116] IFRS 3, ¶51 and ¶52.
[117] Expert Report of Mark E. Zmijewski, Ph. D. filed in this litigation on March 15, 2010, at 9.

Appendix I

Curriculum Vitae

JOHN P. GARVEY

Principal
Chicago Partners (A Subsidiary of Navigant Consulting)
30 South Wacker Drive, Suite 3100
Chicago, Illinois 60606
Telephone: (312) 251-4571
Facsimile: (312) 251-5201

CURRENT EMPLOYMENT

CHICAGO PARTNERS (A Subsidiary of Navigant Consulting)

Principal, (Present; 1996 – 1999)

EDUCATION

M.B.A. (Finance), The University of Chicago, 1988

B.B. (Accounting), Western Illinois University, 1978

Certified Public Accountant, Licensed in Illinois

PROFESSIONAL EXPERIENCE

CHICAGO PARTNERS (A Subsidiary of Navigant Consulting)

John Garvey, *Principal*, is a CPA. He is the former President of Chicago Partners and currently serves as the Segment Leader of the Economics Practice of Navigant Consulting, Inc. He has testified or directed complex litigation matters regarding fraud and forensic accounting, securities fraud, accounting irregularities, merger and acquisition disputes, derivative disputes, professional liability, bankruptcy and solvency, business valuation and general damages issues. Mr. Garvey has represented numerous companies and individuals before regulatory bodies including the Securities and Exchange Commission and the CFTC. Mr. Garvey has also assisted counsel in many high profile board directed investigations of allegations of fraud and accounting irregularities. He has appeared as an expert in Delaware Chancery Court, Bankruptcy Court, State and Federal courts and in various administrative forums. Mr. Garvey has also served as an independent arbitrator.

PROFESSIONAL EXPERIENCE (con't.)

ARTHUR ANDERSEN LLP

Partner and Market Team Leader for Business Fraud and Investigation Services, (1999-2001)

Assisted in house or special counsel in conducting internal corporate investigations into alleged fraud and/or illegal acts perpetrated by employees and/or officers of publicly held and privately owned enterprises.

Assisted outside counsel in the investigation of liability and damages issues in numerous large class action Federal securities suits and the defense of several "Big Five" accounting firms regarding the interpretation and application of GAAP, GAAS and public disclosure issues.

Assisted special counsel to the audit committees of the board of directors of numerous Fortune 500 companies in the investigation and resolution of alleged accounting irregularities.

Have participated in over 30 board directed investigations into alleged accounting irregularities.

Represented various companies in front of regulatory bodies including the Securities and Exchange Commission and the Commodity Futures Trading Commission.

Represented both buyers and sellers in post-acquisition disputes regarding the analysis of and interpretation of contractual and GAAP issues and related valuation questions. Served as an independent arbitrator for several post-acquisition disputes.

FORT DEARBORN PARTNERS, INC.

Vice President, (June, 1994 - December, 1995)

Vice President in a financial and management consulting firm specializing in mergers and acquisitions and related financing transactions.

Represented buyers and sellers of middle market companies in mergers and acquisitions and financing transactions.

PROFESSIONAL EXPERIENCE (con't.)

Provided business valuation, merger and acquisition analysis and general damage analysis consulting in litigation matters related to fraud, securities, mergers and acquisitions, professional liability, business valuation and general damages issues.

DELOITTE & TOUCHE

Partner, (1980 - June, 1994)

Partner with fourteen years of general audit and consulting experience servicing a variety of publicly and privately held companies, with an emphasis in manufacturing and distribution and financial services. Clients served included Beatrice Companies, Borg-Warner Corporation, the Chicago Board of Trade, Hollister, Inc., ICM Industries, Inc., the Keebler Company and Navistar International Corporation.

Other specialized experience included:

Special Acquisition Services

Supervised numerous due diligence engagements in a broad spectrum of transactions, including leveraged buyouts, acquisitions, dispositions, mergers, joint ventures, refinancings and restructurings. Engagements ranged in size from several of the largest leveraged buyouts to transactions in the $50 to $100 million ranges. Financial buyers served included KKR, The Blackstone Group, Merrill Lynch Capital Partners and ICM Industries, Inc.

Participated in several financial and operational restructurings for a Fortune 100 Company providing technical consulting in the areas of recapitalizations and debt restructurings, disposition strategies, strategic cost management and financial and regulatory reporting.

Litigation Services

Provided financial and damage analyses to attorneys in connection with lawsuits related to patent infringement, fraud and misappropriation of assets, accounting malpractice and negligence, mergers and acquisition disputes, securities fraud, breach of contract, lost profits, business valuation, market analysis, and other matters in the commodities and securities industries, professional service industry, retailing and manufacturing and distribution industries. Also provided consulting

PROFESSIONAL EXPERIENCE (con't.)

assistance to attorneys on technical accounting, auditing and corporate finance issues. Personally directed or involved in approximately 20 cases. Served as Arbitrator in binding arbitration.

Member of Deloitte & Touche National Litigation Steering Committee.

PROFESSIONAL AFFILIATIONS

Association of Certified Fraud Examiners
American Institute of Certified Public Accountants
Illinois CPA Society
Boys & Girls Clubs of Chicago - Corporate Board Member

SELECTED LITIGATION ENGAGEMENTS

Securities and Exchange Commission v. Delphi Corp., et al. United States District Court – Eastern District of Michigan. Securities Fraud. Testified on behalf of plaintiff at deposition.

Delphi Corporation v. Appaloosa Management L.P., et. al. United States Bankruptcy Court – Southern District of New York. Breach of Contract. Testified on behalf of defendants at deposition.

Dr. Anthony Cerami v. Novartis Vaccines and Diagnostics, Inc. United States District Court – Southern District of New York. Breach of Contract. Testified on behalf of defendant at deposition.

Banco Espirito Santo International, Ltd., ESB Finance, Ltd. and Banco Espirito Santo S.A. v. BDO Seidman, LLP and BDO International B.V. Circuit Court – Miami Dade County, Florida. Professional Negligence/Malpractice. Testified on behalf of defendants at deposition and trial.

Appleton Papers Inc. v. Andritz BMB AG. Circuit Court - State of Wisconsin. Breach of Contract and Fraud. Testified on behalf of plaintiff at deposition.

United States of America v. Gregory L. Reyes. United States District Court – Northern District of California – San Francisco Division. Securities Fraud. Testified on behalf of plaintiff at trial.

Marsulex, Inc., Claimant v. Trelleborg Corporation, et al., Respondents. AAA Arbitration. Fraud and breach of contract. Testified on behalf of Claimant at deposition and arbitration.

SELECTED LITIGATION ENGAGEMENTS (con't.)

In re Parmalat Securities Litigation. MDL 1653. United States District Court - Southern District of New York. Securities Fraud. Testified on behalf of defendant, Grant Thornton International, at deposition.

Parmalat Capital Finance Limited v. Grant Thornton International, et al. Circuit Court of Cook County Illinois - Law Division. Securities Fraud. Testified on behalf of defendant at deposition.

Securities and Exchange Commission v. Gregory L. Reyes, et al. United States District Court – Northern District of California. Securities Fraud. Testified on behalf of plaintiff at deposition.

Securities and Exchange Commission v. Jeffrey P. Jorissen, Gary A. Shipman and Mary A. Perella. United States District Court – Eastern District of Michigan. Testified on behalf of defendant, Jeffrey P. Jorissen at deposition.

American Farm Bureau, Inc. Claimant v. IBFA Acquisition Company, LLC; Respondent. AAA Arbitration – Central Case Management Center. Fraud and breach of contract. Testified on behalf of Claimant at deposition.

Panolam Industries International, Inc. and Pioneer Plastics Corporation v. Neste Resins Corporation, Neste Resins Canada and Dynea U.S.A., Inc. United States District Court - District of Connecticut. Breach of contract. Testified on behalf of defendants at deposition.

Joseph White v. Heartland High-Yield Municipal Bond Fund, et al. United States District Court - Eastern District of Wisconsin. Testified on behalf of defendant, PricewaterhouseCoopers at deposition.

The State of Oregon, By and Through the Oregon Public Employees Retirement Board v. McKesson HBOC, Inc. , et al. Superior Court of California. Securities fraud. Testified on behalf of defendants at deposition.

SERVED AS INDEPENDENT ARBITRATOR IN SEVERAL POST ACQUISTION CONTRACT AND BREACH OF CONTRACT DISPUTES

BOARD AND REGULATORY (SEC) INVESTIGATIONS

Waste Management, Inc.
Sunbeam Corporation
Kmart Corporation
OfficeMax, Inc.
Hanover Compressor
Flowserve Corporation

BOARD AND REGULATORY (SEC) INVESTIGATIONS (con't.)

Dana Corporation
General Mills

Appendix II

Documents Relied Upon

Documents in the Record

Depositions

Deponent	Date
Steven Berkenfeld	8/6/2009
Paolo Tonucci	8/14/2009
Bart McDade	9/2/2009
John Varley	9/3/2009
Patrick Clackson	9/4/2009
Stephen King	9/10/2009
Gary Romain	9/10/2009
John Varley	9/11/2009
Gary Romain	1/13/2010
Paul Pfleiderer	2/23/2010
James Seery	3/3/2010

Deposition Exhibits

Exhibit	Beginning Bates	Ending Bates
1 - Asset Purchase Agreement		
24 - First Amendment to the Asset Purchase Agreement		
25 - Clarification Letter		
51- Transfer and Assumption Agreement, dated Sept. 22, 2008		
86B - Summary of the numbers for Schedules A and B provided to auditors	BCI-EX 00099519	BCI-EX 00099521
87B - JPM Inventory, Annex A Assets	BCI-EX-00108700	
88B - Barclays' Acquisition Balance Sheet	BCI-EX-00109154	BCI-EX-00109161
205 - Settlement Agreement between JPM, Barclays and Giddens, dated Dec. 5, 2008		
377A - Barclays' Opening Balance Sheet	BCI-EX-00115843	BCI-EX-00115846
444- Declaration of Shari D. Leventhal, in Support of Trustee's Motion For Entry of an Order Approving a Settlement Agreement		
495 - Debtor's Motion for an Order, Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Modifying the September 20, 2008 Sale Order and Granting Other Relief, Sept. 15, 2009		
533A - Lehman Acquisition Assets Summary	BCI-EX-00295932	BCI-EX-00295933
591 - Report of Peter Vinella, dated Jan. 1, 2010		
600 - Report of Anthony Saunders, dated Jan. 1, 2010		
633A - Expert Report of Prof. Paul Pfleiderer, Volume 1		
634A - Expert Report of Prof. Paul Pfleiderer, Volume 2		
641A - Email from Sean Teague to Tal Litvin, et al., Feb. 12, 2009, re: "Acquisition Balance Sheet," (with attachments).	BCI-EX-(S)-00213990	BCI-EX-(S)-00213996
652 - Report of Anthony J. Leitner, dated Jan. 1, 2010		

BCI Opposition Brief Exhibits

146 - Romain's Handwritten Notes	
147 - Romain's Typed Notes	
357 - Declaration of Romain, dated Jan. 26, 2010	
363 - Declaration of Stephen King, dated Jan. 27, 2010	

Other Documents

Description	Beginning Bates	Ending Bates
Summary of the numbers for Schedules A and B provided to auditors (native file)	BCI-EX 00099519	
Email from Romain to PwC, dated Oct. 24, 2008, Re: JPM securities	BCI-EX-(S)-00110050	
Email chain between PwC and Barclays, dated Feb. 1, 2009, Re: Opening BS Valuation Work	BCI-EX-(S)-00110233	BCI-EX-(S)-00110238
Balance Sheet Close – Inventory, ITS Close Narrative	BCI-EX-(S)-00213939	BCI-EX-(S)-00213940
Balance Sheet Close – Inventory, MTS Close Narrative	BCI-EX-(S)-00213941	BCI-EX-(S)-00213945
Barclays Capital Valuation Methodology	BCI-EX-(S)-00213991	BCI-EX-(S)-00213992
Email from Romain to Clackson, et. al., dated Dec. 14, 2008, Re: Valuation of securities	BCI-EX-00218500	BCI-EX-00218501
Email from Morton to Holloway, dated Dec. 12, 2008	BCI-EX-00218502	BCI-EX-00218503
Email from Romain, dated Jan. 27, 2009, Opening Balance Sheet attached	BCI-EX-00247453	BCI-EX-00247454
Email chain between Mark Washtell and PwC, dated Oct. 20, 2008 - Jan. 13, 2009, Re: Bid offer calculation	BCI-EX-00248365	BCI-EX-00248379
Memorandum dated February 2, 2009 from Richard Landreman to PwC, subject "RMBS Portfolio Acquired from Lehman - Bid/Offer Reserve Agency CMOs"	BCI-EX-00248415	BCI-EX-00248418
Long Island - Gross Acquisition Balance Sheet (draft) with Romain's notes	BCI-EX-00248592	
PwC Testing-Additional Securities	BCI-EX-00249452	

Equity Bid-Offer Calculation, dated Sept. 22, 2008	BCI-EX-00255172	
New LBI Firm Asset List A 12312008 FINAL	BCI-EX-00255181	
Letter from Ananda K. Radhakrishnan, dated Sept. 19, 2008	BCI-EX-00258394	
Lehman Cash Muni Price Testing 20081231 PwC.xls	BCI-EX-00258590	
Barclays Lehman Report and Exhibits	BCI-EX-00292153	BCI-EX-00292237
Sched B LehOBS 5	BCI-EX-00295934	
Support for Exhibit 533-A (produced in native format)	BCI-EX-00297320	
Bloomberg screen shots, Giants Stadium Bonds	BCI-EX-00297526	BCI-EX-00297541
Barclays Capital NA - FMV of Investments Testing	PwC-BarCapWP_00021945	PwC-BarCapWP_00021952
Final- BarCap - Lehman Acquisition Memo Revised 2/08/09 Draft	PwC-BarCapWP_00022935	PwC-BarCapWP_00022948
Review of JPM Acquisition Valuation (12/22/08) for CDOs and Corporate Bonds	PwC-BarCapWP_00023570	PwC-BarCapWP_00023576
Barclays JPM Draft Memo v13	PwC-BarCapWP_00023595	PwC-BarCapWP_00023604
Summary Meeting_Unencumbered Assets	PwC-BarCapWP_00027533	
Valuation of Buildings	PwC-BarCapWP_00042499	PwC-BarCapWP_00042502
CBRE - 27 Commerce (Cranford) Appraisal	PwC-BarCapWP_00042504	PwC-BarCapWP_00042582
CBRE - 40 Corporate (Piscataway) Appraisal	PwC-BarCapWP_00042583	PwC-BarCapWP_00042670
745 Seventh Avenue Appraisal	PwC-BarCapWP_00042671	PwC-BarCapWP_00042692
745 Seventh Ave - CBRE Appraisal	PwC-BarCapWP_00042693	PwC-BarCapWP_00042808
BCI Rule 60 Opposition and Undelivered Assets Brief, dated Jan. 29, 2010		
Debtors' Adversary Complaint, dated Nov. 16, 2009		
Expert Report of Harrison J. Goldin, dated Mar. 15, 2010		
Expert Report of John J. Schneider, dated Mar. 15, 2010		
Expert Report of John Olvany, dated Mar. 15, 2010		
Expert Report of Joseph Schwaba, dated Mar. 15, 2010		
Expert Report of Mark E. Slattery, dated Mar. 15, 2010		
Expert Report of Mark E. Zmijewski, dated Mar. 15, 2010		
Hearing Transcript, dated Sept. 19, 2008		
Hearing Transcript, dated Dec. 22, 2008		
Letter from Davenport to Carrero, dated Feb. 6, 2010		
Letter from Jonathan W. Davenport, dated Feb. 6, 2010		
Letter from Martine M. Beamon (Davis Polk & Wardwell LLP; counsel for PwC) to William J. Hine, dated Feb. 12, 2010		
Motion of Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc., et al., Pursuant to 11 U.S.C. § 105(a), Fed. R. Civ. P. 60(b), and Fed. R. Bankr. P. 9024, for Relief from Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006, dated Sept. 15, 2009		
Official Committee of Unsecured Creditors' Adversary Complaint, dated Nov. 16, 2009		
Report of Anton R. Valukas, Examiner in re Lehman Brothers Holdings, Inc. et al, Chapter 11 Case No. 08-13555 (JMP), Volume 7, Appendix 3, Key Individuals		
The Trustee's Adversary Complaint, Nov. 16, 2009		
The Trustee's Motion for Relief Pursuant to the Sale Orders or, Alternatively, for Certain Limited Relief Under Rule 60(b), Sept. 15, 2009		
Documents that are Publicly Available		
Accounting Terminology Bulletin 3 *Book Value*		
AU Section 328 *Auditing Fair Value Measurements and Disclosures*		
Barclays Annual Report, year ended Dec. 31, 2008		
Barclays PLC, Form 20-F, year ended Dec. 31, 2008		
David N. Ricchiute, *Auditing* , 8th edition (United States: Thomson / South-Western, 2006 (ISBN: 0-324-22629-2))		
http://dictionary.reference.com/browse/book+value		
http://en.wikipedia.org/wiki/Book_value		
http://www.fasb.org/intl/convergence_iasb.shtml		
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http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526571&pf=true		
http://www.iasb.org/The+organisation/IASCF+and+IASB.htm		
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http://www.thefreedictionary.com/book+value		
IAS 39 *Financial Instruments Recognition and Measurement*		
IASB *Information for Observers* (IASB Board Meeting, London, Dec. 12, 2007)		
IFRIC 1 *Changes in Existing Decommissioning, Restoration and Similar Liabilities*		
IFRS 3 *Business Combinations*		
JP Morgan, Form 10-K, year ended Dec. 31, 2008		
Lehman Brothers Holdings Inc., Form 10-K, year ended Nov. 30, 2007		
SEC Regulation S-K, *Non Financial Statement Requirements*		
SEC Regulation S-X, *Financial Statement Requirements*		
SFAS 157 *Fair Value Measurements*		
WestAmerica Bancorporation, Form 8-K, filed Feb. 6, 2009		

Appendix III

Summary of Relevant Accounting Principles

1. This Appendix presents a summary of relevant accounting principles.

2. The management of Barclays PLC and Barclays Bank PLC is responsible for "the preparation of financial statements for external reporting purposes in accordance with International Financial Reporting Standards (IFRS) as adopted by the European Union and the International Accounting Standards Board (IASB)."[118]

3. This assertion is stated clearly in the financial statements (Annual Report and Form 20-F) issued by Barclays for the fiscal year ended December 31, 2008.[119]

4. Lehman Brothers Holdings Inc. and its subsidiaries prepared their financial statements in accordance with U.S. generally accepted accounting principles ("U.S. GAAP").[120] U.S. GAAP and IFRS standards are developed using similar processes.[121] "In October 2002, the FASB and the International Accounting Standards Board (IASB) announced the issuance of a memorandum of understanding ("Norwalk Agreement"), marking a significant step toward formalizing their commitment to the convergence of U.S. and international accounting standards."[122] When discussing relevant generally accepted accounting principles, I focus on IFRS (the standards governing Barclays's external financial reporting), and highlight commonalities and differences between IFRS and U.S. GAAP.

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[118] Barclays PLC and Barclays Bank PLC Form 20-F for the fiscal year ended December 31, 2008, page 173. *Identical disclosure in* Barclays PLC Annual Report 2008, page 187.
See also Barclays PLC and Barclays Bank PLC Form 20-F for the fiscal year ended December 31, 2008, page 176. *Identical disclosure in* Barclays PLC Annual Report 2008, page 190.
[119] Barclays PLC and Barclays Bank PLC Form 20-F for the fiscal year ended December 31, 2008, page 173. *Identical disclosure in* Barclays PLC Annual Report 2008, page 187.
See also Barclays PLC and Barclays Bank PLC Form 20-F for the fiscal year ended December 31, 2008, page 176. *Identical disclosure in* Barclays PLC Annual Report 2008, page 190.
[120] Lehman Brothers Holding, Inc., Form 10-K for the fiscal year ended November 30, 2007, page 84.
[121] http://www.iasb.org/The+organisation/IASCF+and+IASB.htm, last visited March 10, 2010, http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526571&pf=true last visited March 10, 2010, http://www.fasb.org/jsp/FASB/Page/SectionPage&cid=1176154526495&pf=true last visited March 10, 2010.
[122] http://www.fasb.org/intl/convergence_iasb.shtml, last visited March 10, 2010.

A. BOOK VALUE

5. "The term *book value* is one of several widely used expressions in which the word value appears with a particular qualifying adjective to denote a particular concept of value. Book value is to be distinguished from such terms as fair or market value or liquidating value, in that it refers to amounts reflected on accounting records and in financial statements."[123]

6. In reference to individual items in books of accounts or in financial statements, the term *book value* "signifies the amount at which an item is stated in accordance with the accounting principles related to the item."[124] The United States Securities and Exchange Commission ("SEC") uses the term *book value* to denote the "book value of the securities as carried by the registrant."[125] Such interpretation of the term *book value* is in line with the implicit meaning of *book value* as used by the IASB.[126] The IASB made a distinction between "pre-combination book values" and "fair values at the date of the combination."[127] The IASB recognizes that there is a difference between the pre-combination book value and the fair value an acquirer may assign in a transaction.

B. FAIR VALUE

7. This section presents an overview relevant accounting principles for measuring fair value. Appendix IV discusses fair value hierarchy and related fair value measurement considerations.

8. IAS 39 *Financial Instruments: Recognition and Measurement,* (IAS 39) was originally issued in March 1999. In December 2003 IASB issued a revised IAS 39 which "applied for annual periods beginning on or after 1 January 2005."[128] The discussion below focuses on the revised IAS 39, including amendments up to December 2008.

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[123] Accounting Terminology Bulletin 3, *Book Value* (ATB 3), ¶1.
[124] Accounting Terminology Bulletin 3, *Book Value* (ATB 3), ¶5.
[125] SEC Regulation S-X, *Financial Statement Requirements*, SEC RegS-X.T.Rule3-16.
Also see SEC RegS-X.I.Rule3-05.Determining Significance – Asset Test [5].
Also see SEC Regulation S-K, *Non Financial Statement Requirements*, RegS-K.T.Item914.
[126] *See* IFRIC 1 *Changes in Existing Decommissioning, Restoration and Similar Liabilities*, ¶IE8, Note (3).
[127] IFRS 3, ¶BC51: "…[b]ecause the assets and liabilities of all the combining entities would be recognised at their pre-combination book values rather than at their fair values at the date of the combination, users of the combined entity's financial statements would be unable to assess reasonably the nature, timing and extent of future cash flows expected to arise from the combined entity as a result of a combination..."
[128] IAS 39, ¶IN1.

9. IAS 39 establishes "principles for recognising and measuring financial assets, financial liabilities and some contracts to buy or sell non-financial items."[129] IAS 39 requires that "[w]hen a financial asset or financial liability is recognised initially, an entity shall measure it at its fair value."[130]

10. IAS 39 defines fair value as "the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction."[131] IAS 39 uses the terms *bid-price, asking price,* and *current-offer price* but does not reference the term *exit price*.[132] U.S. GAAP explicitly references *exit price* – "the objective of a fair value measurement is to **determine the price that would be received to sell the asset or paid to transfer the liability at the measurement date (an exit price)**."[133] In an effort to align the interpretations of exit price in international accounting standards and U.S. GAAP:

> The [IASB] Board confirmed its plan to complete a standard-by-standard review of fair value measurements currently required or permitted in IFRSs to assess whether each standard's measurement basis was intended to be an exit price. For situations in which the measurement basis was not intended to be an exit price, the Board plans to assess whether it should develop additional measurement guidance.[134]

11. IAS 39 lists fair-value measurement considerations:

> The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal business considerations. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual

[129] IAS 39, ¶1.
[130] IAS 39, ¶43.
[131] IAS 39, Definitions, ¶9 (footnote omitted)
[132] IAS 39, ¶AG70
[133] SFAS 157 *Fair Value Measurements,* ¶7 (emphasis added). For similar references to exit price, see SFAS 157 Summary, and SFAS 157 ¶16, 17, 30, A2, A8, A27, C13, C16, C21, C23, C26, C29, C52, C63, C84.
[134] IASB *Information for Observers* (IASB Board Meeting, London, December 11, 2007, in re: Project *Fair Value Measurement*, Subject Cover Note (*Agenda Paper 2A*), ¶4).

> market transactions, the entity uses that technique. The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (ie without modification or repackaging) or based on any available observable market data.[135]

12. IAS 39 provides additional guidance about how to determine fair values using valuation techniques:

- The objective is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal business considerations.
- A valuation technique (a) incorporates all factors that market participants would consider in setting a price and (b) is consistent with accepted economic methodologies for pricing financial instruments.
- In applying valuation techniques, an entity uses estimates and assumptions that are consistent with available information about the estimates and assumptions that market participants would use in setting a price for the financial instrument.
- The best estimate of fair value at initial recognition of a financial instrument that is not quoted in an active market is the transaction price unless the fair value of the instrument is evidenced by other observable market transactions or is based on a valuation technique whose variables include only data from observable markets.[136]

C. <u>BUSINESS COMBINATIONS</u>

13. IFRS 3 *Business Combinations,* issued in March 2004, applied "to the accounting for business combinations for which the *agreement date* is on or after 31 March 2004."[137] "The objective of this IFRS [IFRS 3 *Business Combinations*] is to specify the financial

[135] IAS 39, ¶48A.
[136] IAS 39, ¶IN18.
[137] IFRS 3, ¶78.

reporting by an entity when it undertakes a *business combination*. In particular, it specifies that all business combinations should be accounted for by applying the purchase method. Therefore, the acquirer recognises the acquiree's identifiable assets, liabilities and *contingent liabilities* at their *fair values* at the *acquisition date,* and also recognises *goodwill*, which is subsequently tested for impairment rather than amortised." [138]

14. IFRS 3 *Business Combinations* requires:

- all business combinations within its scope to be accounted for by applying the purchase method.[139]
- an acquirer to measure the cost of a business combination as the aggregate of: the fair values, at the date of exchange, of assets given, liabilities incurred or assumed, and equity instruments issued by the acquirer, in exchange for control of the acquiree; plus any costs directly attributable to the combination.[140]
- **an acquirer to recognise separately, at the acquisition date**, the acquiree's identifiable assets, liabilities and contingent liabilities that satisfy the following recognition criteria at that date, regardless of whether they had been previously recognised in the acquiree's financial statements:

  (i) in the case of an asset other than an intangible asset, it is probable that any associated future economic benefits will flow to the acquirer, and its fair value can be measured reliably;

  (ii) in the case of a liability other than a contingent liability, it is probable that an outflow of resources embodying economic benefits will be required to settle the obligation, and its fair value can be measured reliably; and

  (iii) in the case of an intangible asset or a contingent liability, its fair value can be measured reliably.[141]

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[138] IFRS 3, ¶1 (italics in the original)
[139] IFRS 3, ¶IN7(a). IAS 22, the predecessor to IFRS 3, "permitted business combinations to be accounted for using one of two methods: the pooling of interests method for combinations classified as unitings of interests and the purchase method for combinations classified as acquisitions." (IFRS 3, ¶IN9)
[140] IFRS 3, ¶IN7(c).
[141] IFRS 3, ¶IN7(d) (emphasis added).

- the identifiable assets, liabilities and contingent liabilities that satisfy the above recognition criteria **to be measured initially by the acquirer at their fair values at the acquisition date**, irrespective of the extent of any minority interest.[142]

- goodwill acquired in a business combination to be recognised by the acquirer as an asset from the acquisition date, initially measured as the excess of the cost of the business combination over the acquirer's interest in the net fair value of the acquiree's identifiable assets, liabilities and contingent liabilities recognised in accordance with IFRS 3, ¶IN7(d).[143]

- the acquirer to reassess the identification and measurement of the acquiree's identifiable assets, liabilities and contingent liabilities and the measurement of the cost of the business combination if the acquirer's interest in the net fair value of the items recognised in accordance with IFRS 3, ¶IN7(d) exceeds the cost of the combination. Any excess remaining after that reassessment must be recognised by the acquirer immediately in profit or loss.[144]

1. <u>Measurement Date</u>

15. IFRS 3 *Business Combinations* requires the acquirer to "**measure the cost of a business combination as the aggregate of: (a) the fair values, at the date of exchange, of assets given, liabilities incurred or assumed, and equity instruments issued by the acquirer, in exchange for control of the acquiree; plus (b) any costs directly attributable to the business combination.**"[145]

2. <u>Acquisition Date Fair Value</u>

16. IFRS 3 states:

> **The acquirer shall measure the cost of a business combination as the aggregate of:**

[142] IFRS 3, ¶IN7(e) (emphasis added).
[143] IFRS 3, ¶IN7(f). *See* IFRS 3, ¶IN7(d) cited above.
[144] IFRS 3, ¶IN7(h). *See* IFRS 3, ¶IN7(d) cited above
[145] IFRS 3, ¶24 (bold-face type in the original). IFRS 3 states: "All the paragraphs have equal authority. Paragraphs in bold type state the main principles."

> **(a) the fair values, at the date of exchange, of assets given, liabilities incurred or assumed, and equity instruments issued by the acquirer, in exchange for control of the acquiree; plus**
> **(b) any costs directly attributable to the business combination.**[146]

17. Paragraph 27 elevates the published price of a quoted instrument as the best evidence of the instrument's fair value:

> **The published price at the date of exchange of a quoted equity instrument provides the best evidence of the instrument's fair value and shall be used, except in rare circumstances.** Other evidence and valuation methods shall be considered only in the rare circumstances when the acquirer can demonstrate that the published price at the date of exchange is an unreliable indicator of fair value, and that the other evidence and valuation methods provide a more reliable measure of the equity instrument's fair value. The published price at the date of exchange is an unreliable indicator only when it has been affected by the thinness of the market. If the published price at the date of exchange is an unreliable indicator or if a published price does not exist for equity instruments issued by the acquirer, the fair value of those instruments could, for example, be estimated by reference to their proportional interest in the fair value of the acquirer or by reference to the proportional interest in the fair value of the acquiree obtained, whichever is the more clearly evident. The fair value at the date of exchange of monetary assets given to equity holders of the acquiree as an alternative to equity instruments may also provide evidence of the total fair value given by the acquirer in exchange for control of the acquiree. In any event, all aspects of the combination, including significant factors influencing the negotiations, shall be considered. Further guidance on determining the fair value of equity instruments is set out in IAS 39 *Financial Instruments: Recognition and Measurement.*[147]

3. Negative Goodwill (a.k.a. Bargain Purchase)

18. According to IFRS, "Goodwill acquired in a business combination represents a payment made by the acquirer in anticipation of future economic benefits from assets that are not capable of being individually identified and separately recognised."[148]

19. Negative goodwill arises in business combinations when the net fair value of identifiable assets, liabilities and contingent liabilities acquired exceeds the purchase price (hence, *bargain purchases*) and yields a gain to the acquirer:

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[146] IFRS 3, ¶24 (bold-face type in the original.) IFRS 3 states: "All the paragraphs have equal authority. Paragraphs in bold type state the main principles."
[147] IFRS 3, ¶27. (emphasis added)
[148] IFRS 3, ¶52.

If the acquirer's interest in the net fair value of the identifiable assets, liabilities and contingent liabilities recognised in accordance with paragraph 36 exceeds the cost of the business combination, the acquirer shall:
(a) reassess the identification and measurement of the acquiree's identifiable assets, liabilities and contingent liabilities and the measurement of the cost of the combination; and
(b) recognise immediately in profit or loss any excess remaining after that reassessment.[149]

[149] IFRS 3, ¶56. (bold-face type in the original)

Appendix IV

Fair Value Considerations

1. This Appendix presents an overview of relevant accounting principles for measuring fair value. This Appendix summarizes specific guidance provided by international accounting standards (such as IAS 39 *Financial Instruments: Recognition and Measurement*, ("IAS 39")) and generally accepted accounting principles (such as SFAS 157, *Fair Value Measurements* ("SFAS 157")).

2. IAS 39 ¶48A states:

> The best evidence of fair value is quoted prices in an active market. If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal business considerations. Valuation techniques include using recent arm's length market transactions between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models. If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique. The chosen valuation technique makes maximum use of market inputs and relies as little as possible on entity-specific inputs. It incorporates all factors that market participants would consider in setting a price and is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (ie without modification or repackaging) or based on any available observable market data.[150]

3. IAS 39 ¶AG69 through ¶AG82 offer additional fair value measurement considerations:

- AG69: Underlying the definition of fair value is a presumption that an entity is a going concern without any intention or need to liquidate, to curtail materially the scale of its operations or to undertake a transaction on adverse

[150] IAS 39 ¶48A.

terms. **Fair value is not, therefore, the amount that an entity would receive or pay in a forced transaction, involuntary liquidation or distress sale. However, fair value reflects the credit quality of the instrument**.[151]

- AG70: **This Standard** [IAS 39] **uses the terms 'bid price' and 'asking price' (sometimes referred to as 'current offer price') in the context of quoted market prices, and the term 'the bid-ask spread' to include only transaction costs. Other adjustments to arrive at fair value (e.g. for counterparty credit risk) are not included in the term 'bid-ask spread'**.[152]

<u>Active market: quoted price</u>

- AG71: A financial instrument is regarded as quoted in an active market if quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices represent actual and regularly occurring market transactions on an arm's length basis. **Fair value is defined in terms of a price agreed by a willing buyer and a willing seller in an arm's length transaction**. **The objective of determining fair value for a financial instrument that is traded in an active market is to arrive at the price at which a transaction would occur at the end of the reporting period in that instrument (i.e. without modifying or repackaging the instrument) in the most advantageous active market to which the entity has immediate access.** However, the entity adjusts the price in the more advantageous market to reflect any differences in counterparty credit risk between instruments traded in that market and the one being valued. The existence of published price quotations in an active market is the best evidence of fair value and when they exist they are used to measure the financial asset or financial liability.[153]

- AG72: **The appropriate quoted market price for an asset held or liability to be issued is usually the current bid price and, for an asset to be acquired or liability held, the asking price. When an entity has assets and**

[151] IAS 39 ¶AG69 (emphasis added).
[152] IAS 39 ¶AG70 (emphasis added).
[153] IAS 39 ¶AG71 (emphasis added).

liabilities with offsetting market risks, it may use mid-market prices as a basis for establishing fair values for the offsetting risk positions and apply the bid or asking price to the net open position as appropriate. When current bid and asking prices are unavailable, the price of the most recent transaction provides evidence of the current fair value as long as there has not been a significant change in economic circumstances since the time of the transaction. If conditions have changed since the time of the transaction (e.g. a change in the risk-free interest rate following the most recent price quote for a corporate bond), the fair value reflects the change in conditions by reference to current prices or rates for similar financial instruments, as appropriate. Similarly, if the entity can demonstrate that the last transaction price is not fair value (e.g. because it reflected the amount that an entity would receive or pay in a forced transaction, involuntary liquidation or distress sale), that price is adjusted. **The fair value of a portfolio of financial instruments is the product of the number of units of the instrument and its quoted market price. If a published price quotation in an active market does not exist for a financial instrument in its entirety, but active markets exist for its component parts, fair value is determined on the basis of the relevant market prices for the component parts.**[154]

<u>No active market: valuation technique</u>

- AG73: **If a rate (rather than a price) is quoted in an active market, the entity uses that market-quoted rate as an input into a valuation technique to determine fair value. If the market-quoted rate does not include credit risk or other factors that market participants would include in valuing the instrument, the entity adjusts for those factors**.[155]

- AG74: **If the market for a financial instrument is not active, an entity establishes fair value by using a valuation technique. Valuation techniques include using recent arm's length market transactions**

[154] IAS 39 ¶AG72 (emphasis added).
[155] IAS 39 ¶AG73 (emphasis added).

between knowledgeable, willing parties, if available, reference to the current fair value of another instrument that is substantially the same, discounted cash flow analysis and option pricing models.

If there is a valuation technique commonly used by market participants to price the instrument and that technique has been demonstrated to provide reliable estimates of prices obtained in actual market transactions, the entity uses that technique.[156]

- AG75: The objective of using a valuation technique is to establish what the transaction price would have been on the measurement date in an arm's length exchange motivated by normal business considerations. **Fair value is estimated on the basis of the results of a valuation technique that makes maximum use of market inputs, and relies as little as possible on entity-specific inputs. A valuation technique would be expected to arrive at a realistic estimate of the fair value if (a) it reasonably reflects how the market could be expected to price the instrument and (b) the inputs to the valuation technique reasonably represent market expectations and measures of the risk-return factors inherent in the financial instrument.**[157]
- AG76: Therefore, a valuation technique (a) incorporates all factors that market participants would consider in setting a price and (b) is consistent with accepted economic methodologies for pricing financial instruments. Periodically, an entity calibrates the valuation technique and tests it for validity using prices from any observable current market transactions in the same instrument (i.e. without modification or repackaging) or based on any available observable market data. An entity obtains market data consistently in the same market where the instrument was originated or purchased. The best evidence of the fair value of a financial instrument at initial recognition is the transaction price (i.e. the fair value of the consideration given or received)

[156] IAS 39 ¶AG74 (emphasis added).
[157] IAS 39 ¶AG75 (emphasis added).

unless the fair value of that instrument is evidenced by comparison with other observable current market transactions in the same instrument (i.e. without modification or repackaging) or based on a valuation technique whose variables include only data from observable markets.[158]

- AG76A: The subsequent measurement of the financial asset or financial liability and the subsequent recognition of gains and losses shall be consistent with the requirements of this Standard. The application of paragraph AG76 may result in no gain or loss being recognised on the initial recognition of a financial asset or financial liability. In such a case, IAS 39 requires that a gain or loss shall be recognised after initial recognition only to the extent that it arises from a change in a factor (including time) that market participants would consider in setting a price.[159]
- AG77: The initial acquisition or origination of a financial asset or incurrence of a financial liability is a market transaction that provides a foundation for estimating the fair value of the financial instrument. In particular, if the financial instrument is a debt instrument (such as a loan), its fair value can be determined by reference to the market conditions that existed at its acquisition or origination date and current market conditions or interest rates currently charged by the entity or by others for similar debt instruments (ie similar remaining maturity, cash flow pattern, currency, credit risk, collateral and interest basis). Alternatively, provided there is no change in the credit risk of the debtor and applicable credit spreads after the origination of the debt instrument, an estimate of the current market interest rate may be derived by using a benchmark interest rate reflecting a better credit quality than the underlying debt instrument, holding the credit spread constant, and adjusting for the change in the benchmark interest rate from the origination date. If conditions have changed since the most recent market transaction, the corresponding change in the fair value of the financial instrument being valued is determined by reference to current prices or rates for similar

[158] IAS 39 ¶AG76.
[159] IAS 39 ¶AG76A.

financial instruments, adjusted as appropriate, for any differences from the instrument being valued.[160]

- AG78: The same information may not be available at each measurement date. For example, at the date that an entity makes a loan or acquires a debt instrument that is not actively traded, the entity has a transaction price that is also a market price. However, no new transaction information may be available at the next measurement date and, although the entity can determine the general level of market interest rates, it may not know what level of credit or other risk market participants would consider in pricing the instrument on that date. An entity may not have information from recent transactions to determine the appropriate credit spread over the basic interest rate to use in determining a discount rate for a present value computation. It would be reasonable to assume, in the absence of evidence to the contrary, that no changes have taken place in the spread that existed at the date the loan was made. However, the entity would be expected to make reasonable efforts to determine whether there is evidence that there has been a change in such factors. When evidence of a change exists, the entity would consider the effects of the change in determining the fair value of the financial instrument.[161]

- AG79: In applying discounted cash flow analysis, an entity uses one or more discount rates equal to the prevailing rates of return for financial instruments having substantially the same terms and characteristics, including the credit quality of the instrument, the remaining term over which the contractual interest rate is fixed, the remaining term to repayment of the principal and the currency in which payments are to be made. Short-term receivables and payables with no stated interest rate may be measured at the original invoice amount if the effect of discounting is immaterial.[162]

[160] IAS 39 ¶AG77.
[161] IAS 39 ¶AG78.
[162] IAS 39 ¶AG80.

<u>No active market: equity instruments</u>

- AG80: The fair value of investments in equity instruments that do not have a quoted market price in an active market and derivatives that are linked to and must be settled by delivery of such an unquoted equity instrument (see IAS 39 paragraphs 46(c) and 47) is reliably measurable if (a) the variability in the range of reasonable fair value estimates is not significant for that instrument or (b) the probabilities of the various estimates within the range can be reasonably assessed and used in estimating fair value.[163]

- AG81: There are many situations in which the variability in the range of reasonable fair value estimates of investments in equity instruments that do not have a quoted market price and derivatives that are linked to and must be settled by delivery of such an unquoted equity instrument (see paragraphs 46(c) and 47) is likely not to be significant. Normally it is possible to estimate the fair value of a financial asset that an entity has acquired from an outside party. However, if the range of reasonable fair value estimates is significant and the probabilities of the various estimates cannot be reasonably assessed, an entity is precluded from measuring the instrument at fair value.[164]

<u>Inputs to valuation techniques</u>

- AG82: An appropriate technique for estimating the fair value of a particular financial instrument would incorporate observable market data about the market conditions and other factors that are likely to affect the instrument's fair value. The fair value of a financial instrument will be based on one or more of the following factors (and perhaps others). [165]

  (a) *The time value of money (ie interest at the basic or risk-free rate)*. Basic interest rates can usually be derived from observable government bond prices and are often quoted in financial publications. These rates typically vary with the expected dates of the projected cash flows

[163] IAS 39 ¶AG80.
[164] IAS 39 ¶AG81.
[165] IAS 39 ¶AG82.

along a yield curve of interest rates for different time horizons. For practical reasons, an entity may use a well-accepted and readily observable general rate, such as LIBOR or a swap rate, as the benchmark rate. (Because a rate such as LIBOR is not the risk-free interest rate, the credit risk adjustment appropriate to the particular financial instrument is determined on the basis of its credit risk in relation to the credit risk in this benchmark rate.) In some countries, the central government's bonds may carry a significant credit risk and may not provide a stable benchmark basic interest rate for instruments denominated in that currency. Some entities in these countries may have a better credit standing and a lower borrowing rate than the central government. In such a case, basic interest rates may be more appropriately determined by reference to interest rates for the highest rated corporate bonds issued in the currency of that jurisdiction.

(b) *Credit risk*. The effect on fair value of credit risk (ie the premium over the basic interest rate for credit risk) may be derived from observable market prices for traded instruments of different credit quality or from observable interest rates charged by lenders for loans of various credit ratings.

(c) *Foreign currency exchange prices*. Active currency exchange markets exist for most major currencies, and prices are quoted daily in financial publications.

(d) *Commodity prices*. There are observable market prices for many commodities.

(e) *Equity prices*. Prices (and indexes of prices) of traded equity instruments are readily observable in some markets. Present value based techniques may be used to estimate the current market price of equity instruments for which there are no observable prices.

(f) *Volatility (ie magnitude of future changes in price of the financial instrument or other item)*. Measures of the volatility of actively traded

items can normally be reasonably estimated on the basis of historical market data or by using volatilities implied in current market prices.

(g) *Prepayment risk and surrender risk*. Expected prepayment patterns for financial assets and expected surrender patterns for financial liabilities can be estimated on the basis of historical data. (The fair value of a financial liability that can be surrendered by the counterparty cannot be less than the present value of the surrender amount—see IAS 39 paragraph 49.)

(h) *Servicing costs for a financial asset or a financial liability*. Costs of servicing can be estimated using comparisons with current fees charged by other market participants. If the costs of servicing a financial asset or financial liability are significant and other market participants would face comparable costs, the issuer would consider them in determining the fair value of that financial asset or financial liability. It is likely that the fair value at inception of a contractual right to future fees equals the origination costs paid for them, unless future fees and related costs are out of line with market comparables

4. SFAS 157 defines and discusses the Fair Value Hierarchy as follows:

Fair Value Hierarchy

- 22. To increase consistency and comparability in fair value measurements and related disclosures, the fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to quoted prices (unadjusted) in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). In some cases, the inputs used to measure fair value might fall in different levels of the fair value hierarchy. The level in the fair value hierarchy within which the fair value measurement in its entirety falls shall be determined based on the lowest level input that is significant to

the fair value measurement in its entirety. Assessing the significance of a particular input to the fair value measurement in its entirety requires judgment, considering factors specific to the asset or liability.[166]

- 23. The availability of inputs relevant to the asset or liability and the relative reliability of the inputs might affect the selection of appropriate valuation techniques. However, the fair value hierarchy prioritizes the inputs to valuation techniques, not the valuation techniques. For example, a fair value measurement using a present value technique might fall within Level 2 or Level 3, depending on the inputs that are significant to the measurement in its entirety and the level in the fair value hierarchy within which those inputs fall.[167]

Level 1 inputs

- 24. Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date. An active market for the asset or liability is a market in which transactions for the asset or liability occur with sufficient frequency and volume to provide pricing information on an ongoing basis. **A quoted price in an active market provides the most reliable evidence of fair value and shall be used to measure fair value whenever available,** except as discussed in SFAS 157 paragraphs 25 and 26.[168]
- 25. If the reporting entity holds a large number of similar assets or liabilities (for example, debt securities) that are required to be measured at fair value, a quoted price in an active market might be available but not readily accessible for each of those assets or liabilities individually. In that case, fair value may be measured using an alternative pricing method that does not rely exclusively on quoted prices (for example, matrix pricing) as a practical expedient.

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[166] SFAS 157 ¶22.
[167] SFAS 157 ¶23.
[168] SFAS 157 ¶24 (emphasis added).

However, the use of an alternative pricing method renders the fair value measurement a lower level measurement.[169]

- 26. In some situations, a quoted price in an active market might not represent fair value at the measurement date. That might be the case if, for example, significant events (principal-to-principal transactions, brokered trades, or announcements) occur after the close of a market but before the measurement date. The reporting entity should establish and consistently apply a policy for identifying those events that might affect fair value measurements. However, if the quoted price is adjusted for new information, the adjustment renders the fair value measurement a lower level measurement.[170]
- 27. **If the reporting entity holds a position in a single financial instrument (including a block) and the instrument is traded in an active market, the fair value of the position shall be measured within Level 1 as the product of the quoted price for the individual instrument times the quantity held. The quoted price shall not be adjusted because of the size of the position relative to trading volume (blockage factor). The use of a blockage factor is prohibited, even if a market's normal daily trading volume is not sufficient to absorb the quantity held and placing orders to sell the position in a single transaction might affect the quoted price.**[171]

Level 2 inputs

- 28. Level 2 inputs are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. If the asset or liability has a specified (contractual) term, a Level 2 input must be observable for substantially the full term of the asset or liability. Level 2 inputs include the following:[172]

    a. Quoted prices for similar assets or liabilities in active markets

[169] SFAS 157 ¶25.
[170] SFAS 157 ¶26.
[171] SFAS 157 ¶27 (emphasis added, footnote omitted).
[172] SFAS 157 ¶28.

b. Quoted prices for identical or similar assets or liabilities in markets that are not active, that is, markets in which there are few transactions for the asset or liability, the prices are not current, or price quotations vary substantially either over time or among market makers (for example, some brokered markets), or in which little information is released publicly (for example, a principal-to-principal market)

c. Inputs other than quoted prices that are observable for the asset or liability (for example, interest rates and yield curves observable at commonly quoted intervals, volatilities, prepayment speeds, loss severities, credit risks, and default rates)

d. Inputs that are derived principally from or corroborated by observable market data by correlation or other means (market-corroborated inputs).

- 29. Adjustments to Level 2 inputs will vary depending on factors specific to the asset or liability. Those factors include the condition and/or location of the asset or liability, the extent to which the inputs relate to items that are comparable to the asset or liability, and the volume and level of activity in the markets within which the inputs are observed. **An adjustment that is significant to the fair value measurement in its entirety might render the measurement a Level 3 measurement, depending on the level in the fair value hierarchy within which the inputs used to determine the adjustment fall.**[173]

<u>Level 3 inputs</u>

- 30. Level 3 inputs are unobservable inputs for the asset or liability. **Unobservable inputs shall be used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the**

[173] SFAS 157 ¶29 (emphasis added).

measurement date. However, the fair value measurement objective remains the same, that is, an exit price from the perspective of a market participant that holds the asset or owes the liability. Therefore, unobservable inputs shall reflect the reporting entity's own assumptions about the assumptions that market participants would use in pricing the asset or liability (including assumptions about risk). Unobservable inputs shall be developed based on the best information available in the circumstances, which might include the reporting entity's own data. In developing unobservable inputs, the reporting entity need not undertake all possible efforts to obtain information about market participant assumptions. However, the reporting entity shall not ignore information about market participant assumptions that is reasonably available without undue cost and effort. Therefore, the reporting entity's own data used to develop unobservable inputs shall be adjusted if information is reasonably available without undue cost and effort that indicates that market participants would use different assumptions.[174]

<u>Inputs based on bid and ask prices</u>

- 31. **If an input used to measure fair value is based on bid and ask prices (for example, in a dealer market), the price within the bid-ask spread that is most representative of fair value in the circumstances shall be used to measure fair value, regardless of where in the fair value hierarchy the input falls** (Level 1, 2, or 3). **This Statement does not preclude the use of midmarket pricing or other pricing conventions as a practical expedient for fair value measurements within a bid-ask spread.**[175]

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[174] SFAS 157 ¶30 (emphasis added).
[175] SFAS 157 ¶31 (emphasis added).

Appendix V

Overview of the Audit Process

1. "To minimize the risk of materially misstated financial statements, users demand that an unbiased auditor monitor (an independent auditor) report on whether the assertions embodied within management's financial statements are reliable."[176] "Financial statements are audited by independent auditors, but the statements are the representations and responsibility of management, not the auditor. An independent auditor is responsible for expressing an opinion on management's financial statements, but management is responsible for the assertions embodied within the financial statements. For example, management, not the auditor, is responsible that all recorded assets and liabilities exist, that all recorded transactions occurred, that no transactions are omitted, that assets are the rights and liabilities are the obligations of the entity, that all disclosed amounts are appropriate, and that the financial statements are properly classified and disclosed."[177]

2. "If an 'absolute' basis were necessary to form an [audit] opinion, then auditors would have to examine entire populations rather than samples, thereby rendering financial statement audits far too costly. Furthermore, audit risk cannot be totally eliminated by 100 percent testing, because audit risks not related to sampling, such as human error, would still exist." [178]

3. "There is neither sufficient time nor, given the laws of probability, sufficient reason to test all of the transactions underlying an entity's account balances or classes of transactions. As a result, many if not most of the conclusions auditors reach about controls, balances and classes of transactions are based on testing samples rather than entire populations."[179]

[176] David N. Ricchiute, *Auditing*, 8th edition (United States: Thomson / South-Western, 2006 (ISBN: 0-324-22629-2)), 6.
[177] David N. Ricchiute, *Auditing*, 8th edition (United States: Thomson / South-Western, 2006 (ISBN: 0-324-22629-2)), 6.
[178] David N. Ricchiute, *Auditing*, 8th edition (United States: Thomson / South-Western, 2006 (ISBN: 0-324-22629-2)), 357.
[179] David N. Ricchiute, *Auditing*, 8th edition (United States: Thomson / South-Western, 2006 (ISBN: 0-324-22629-2)), 355.

Appendix VI

Auditing Fair Value Measurements and Disclosures

1. PwC conducted its audits of Barclays in accordance with the standards of the Public Accounting Oversight Board (United States).[180]

2. The Public Accounting Oversight Board codified Statement on Auditing Standards ("SAS") 101, *Auditing Fair Value Measurements and Disclosures*, into Auditing Section 328 (AU 328), *Auditing Fair Value Measurements and Disclosures.* AU 328 establishes standards and provides guidance on auditing fair value measurements and disclosures contained in financial statements:

- 2. The auditor should obtain sufficient competent audit evidence to provide reasonable assurance that fair value measurements and disclosures are in conformity with GAAP. GAAP requires that certain items be measured at fair value.[181]

- 4. Management is responsible for making the fair value measurements and disclosures included in the financial statements. As part of fulfilling its responsibility, management needs to establish an accounting and financial reporting process for determining the fair value measurements and disclosures, select appropriate valuation methods, identify and adequately support any significant assumptions used, prepare the valuation, and ensure that the presentation and disclosure of the fair value measurements are in accordance with GAAP.[182]

- 8. The measurement of fair value may be relatively simple for certain assets or liabilities, for example, investments that are bought and sold in active markets that provide readily available and reliable information on the prices at

[180] Report of the Independent Registered Public Accounting Firm (PriceWaterhouseCoopers LLP – Chartered Accountants and Registered Auditors) to the Board of Directors and Shareholders of Barclays PLC (Barclays PLC and Barclays Bank PLC Form 20-F for the fiscal year ended December 31, 2008, page 177).
[181] AU Section 328, ¶2.
[182] AU Section 328, ¶4.

which actual exchanges occur. For those items, the existence of published price quotations in an active market is the best evidence of fair value. The measurement of fair value for other assets or liabilities may be more complex. A specific asset may not have an observable market price or may possess such characteristics that it becomes necessary for management to estimate its fair value based on the best information available in the circumstances (for example, a complex derivative financial instrument). The estimation of fair value may be achieved through the use of a valuation method (for example, a model premised on discounting of estimated future cash flows). [183]

- 8.– 9. The auditor should obtain an understanding of the entity's process for determining fair value measurements and disclosures and of the relevant controls sufficient to develop an effective audit approach.[184] When obtaining an understanding of the entity's process for determining fair value measurements and disclosures, the auditor considers, for example:[185]
  - Controls over the process used to determine fair value measurements, including, for example, controls over data and the segregation of duties between those committing the entity to the underlying transactions and those responsible for undertaking the valuations.
  - The expertise and experience of those persons determining the fair value measurements.
  - The role that information technology has in the process.
  - The types of accounts or transactions requiring fair value measurements or disclosures (for example, whether the accounts arise from the recording of routine and recurring transactions or whether they arise from nonroutine or unusual transactions).
  - The extent to which the entity engages or employs specialists in determining fair value measurements and disclosures.

[183] AU Section 328, ¶8.
[184] AU Section 328, ¶9.
[185] AU Section 328, ¶12.

- The significant management assumptions used in determining fair value.
- The documentation supporting management's assumptions.
- The process used to develop and apply management assumptions, including whether management used available market information to develop the assumptions.
- The process used to monitor changes in management's assumptions.
- The integrity of change controls and security procedures for valuation models and relevant information systems, including approval processes.
- The controls over the consistency, timeliness, and reliability of the data used in valuation models.

- 13. The auditor uses his or her understanding of the entity's process, including its complexity, and of the controls when assessing the risk of material misstatement. Based on that risk assessment, the auditor determines the nature, timing, and extent of the audit procedures. The risk of material misstatement may increase as the accounting and financial reporting requirements for fair value measurements become more complex.[186]

- 18. When there are no observable market prices and the entity estimates fair value using a valuation method, the auditor should evaluate whether the entity's method of measurement is appropriate in the circumstances. That evaluation requires the use of professional judgment. It also involves obtaining an understanding of management's rationale for selecting a particular method by discussing with management its reasons for selecting the valuation method. The auditor considers whether:[187]

  a.) Management has sufficiently evaluated and appropriately applied the criteria, if any, provided by GAAP to support the selected method.

[186] AU Section 328, ¶13.
[187] AU Section 328, ¶18.

b.) The valuation method is appropriate in the circumstances given the nature of the item being valued.

c.) The valuation method is appropriate in relation to the business, industry, and environment in which the entity operates.

- 23. Based on the auditor's assessment of the risk of material misstatement, the auditor should test the entity's fair value measurements and disclosures. Because of the wide range of possible fair value measurements, from relatively simple to complex, and the varying levels of risk of material misstatement associated with the process for determining fair values, the auditor's planned audit procedures can vary significantly in nature, timing, and extent.[188]

- 24. Some fair value measurements are inherently more complex than others. This complexity arises either because of the nature of the item being measured at fair value or because of the valuation method used to determine fair value. For example, in the absence of quoted prices in an active market, an estimate of a security's fair value may be based on valuation methods such as the discounted cash flow method or the transactions method. Complex fair value measurements normally are characterized by greater uncertainty regarding the reliability of the measurement process. This greater uncertainty may be a result of: [189]

  - The length of the forecast period
  - The number of significant and complex assumptions associated with the process
  - A higher degree of subjectivity associated with the assumptions and factors used in the process
  - A higher degree of uncertainty associated with the future occurrence or outcome of events underlying the assumptions used

[188] AU Section 328, ¶23.
[189] AU Section 328, ¶24.

  - Lack of objective data when highly subjective factors are used

- 25. The auditor uses both the understanding of management's process for determining fair value measurements and his or her assessment of the risk of material misstatement to determine the nature, timing, and extent of the audit procedures. The following are examples of considerations in the development of audit procedures:[190]

  - The fair value measurement (for example, a valuation by an independent appraiser) may be made at a date that does not coincide with the date at which the entity is required to measure and report that information in its financial statements. In such cases, the auditor obtains evidence that management has taken into account the effect of events, transactions, and changes in circumstances occurring between the date of the fair value measurement and the reporting date.

  - Collateral often is assigned for certain types of investments in debt instruments that either are required to be measured at fair value or are evaluated for possible impairment. If the collateral is an important factor in measuring the fair value of the investment or evaluating its carrying amount, the auditor obtains sufficient competent audit evidence regarding the existence, value, rights, and access to or transferability of such collateral, including consideration of whether all appropriate liens have been filed, and considers whether appropriate disclosures about the collateral have been made.

  - In some situations, additional procedures, such as the inspection of an asset by the auditor, may be necessary to obtain sufficient competent audit evidence about the appropriateness of a fair value measurement. For example, inspection of the asset may be necessary to obtain information about the current physical condition of the asset relevant to its fair value, or inspection of a security may reveal a restriction on its marketability that may affect its value.

[190] AU Section 328, ¶25.

- 26. The auditor's understanding of the reliability of the process used by management to determine fair value is an important element in support of the resulting amounts and therefore affects the nature, timing, and extent of audit procedures. When testing the entity's fair value measurements and disclosures, the auditor evaluates whether:[191]

  a.) Management's assumptions are reasonable and reflect, or are not inconsistent with, market information.

  b.) The fair value measurement was determined using an appropriate model, if applicable.

  c.) Management used relevant information that was reasonably available at the time.

- 32. Audit procedures dealing with management's assumptions are performed in the context of the audit of the entity's financial statements. The objective of the audit procedures is therefore not intended to obtain sufficient competent audit evidence to provide an opinion on the assumptions themselves. Rather, the auditor performs procedures to evaluate whether the assumptions provide a reasonable basis for measuring fair values in the context of an audit of the financial statements taken as a whole.[192]

- 34. The auditor considers the sensitivity of the valuation to changes in significant assumptions, including market conditions that may affect the value. Where applicable, the auditor encourages management to use techniques such as sensitivity analysis to help identify particularly sensitive assumptions. If management has not identified particularly sensitive assumptions, the auditor considers whether to employ techniques to identify those assumptions.[193]

- 36. To be reasonable, the assumptions on which the fair value measurements are based (for example, the discount rate used in calculating the present value

[191] AU Section 328, ¶26.
[192] AU Section 328, ¶32.
[193] AU Section 328, ¶34.

of future cash flows), individually and taken as a whole, need to be realistic and consistent with:[194]

a.) The general economic environment, the economic environment of the specific industry, and the entity's economic circumstances;

b.) Existing market information;

c.) The plans of the entity, including what management expects will be the outcome of specific objectives and strategies;

d.) Assumptions made in prior periods, if appropriate;

e.) Past experience of, or previous conditions experienced by, the entity to the extent currently applicable;

f.) Other matters relating to the financial statements, for example, assumptions used by management in accounting estimates for financial statement accounts other than those relating to fair value measurements and disclosures; and

g.) The risk associated with cash flows, if applicable, including the potential variability in the amount and timing of the cash flows and the related effect on the discount rate.

- 39. The auditor should test the data used to develop the fair value measurements and disclosures and evaluate whether the fair value measurements have been properly determined from such data and management's assumptions. Specifically, the auditor evaluates whether the data on which the fair value measurements are based, including the data used in the work of a specialist, is accurate, complete, and relevant; and whether fair value measurements have been properly determined using such data and management's assumptions. The auditor's tests also may include, for example, procedures such as verifying the source of the data, mathematical recomputation of inputs, and reviewing of information for internal consistency, including whether such information is consistent with

[194] AU Section 328, ¶36.

management's intent and ability to carry out specific courses of action discussed in paragraph 17.[195]

- 40. The auditor may make an independent estimate of fair value (for example, by using an auditor developed model) to corroborate the entity's fair value measurement. When developing an independent estimate using management's assumptions, the auditor evaluates those assumptions as discussed in paragraphs 28 to 37. Instead of using management's assumptions, the auditor may develop his or her own assumptions to make a comparison with management's fair value measurements. In that situation, the auditor nevertheless understands management's assumptions. The auditor uses that understanding to ensure that his or her independent estimate takes into consideration all significant variables and to evaluate any significant difference from management's estimate. The auditor also should test the data used to develop the fair value measurements and disclosures as discussed in paragraph 39.[196]

[195] AU Section 328, ¶39.
[196] AU Section 328, ¶40.

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS HOLDINGS, INC., et al.,

Case No. 08-13555(JMP)
(Jointly Administered)

Debtors.

-----------------------x

DEPOSITION OF JOHN P. GARVEY
New York, New York
April 13, 2010

Reported by:
KATHY S. KLEPFER, RMR, RPR, CRR, CLR
JOB NO. 29651

April 13, 2010
9:50 A.M.

Deposition of JOHN P. GARVEY, held at the law offices of Boies Schiller & Flexner, LLP, 575 Lexington Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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J. Garvey

JOHN P. GARVEY, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY
MR. HUME:

Q. Good morning, Mr. Garvey.
A. Good morning.
Q. I would like to begin by handing you what's been marked previously as Deposition Exhibit 445.
Mr. Garvey, Exhibit 445 is the cover page and an excerpt from SEC filing Form 6-K that Barclays PLC and Barclays Bank PLC filed with the SEC on February 9, 2009. Do you see that?
A. Yes.
Q. And have you seen this document before?
A. Yes.
Q. The excerpted page is page 83 of that SEC filing. Do you see that?
A. Yes.
Q. And you see on page 83 Barclays

J. Garvey

provides an Acquisition Balance Sheet for its acquisition of the Lehman Brothers North American business, do you see that?

A. Yes.

Q. Is it your opinion, Mr. Garvey, that Barclays materially misstated the value of the assets on this SEC filing?

MS. CARRERO: Objection to the form of the question.

A. I didn't undertake to study that opinion.

Q. Just so the question is clear, my question is do you have an opinion, Mr. Garvey, as to whether Barclays materially misstated the value of the assets acquired in the Lehman Brothers acquisition on its Form 6-K filed with the SEC in February 2009?

A. My opinions are in my report. I don't have that opinion.

Q. You do not have that opinion?

A. No. My opinions are outlined in my report.

Q. Okay. Do you have an opinion, Mr. Garvey, as to whether or not

J. Garvey

PricewaterhouseCoopers failed to conduct a competent audit of Barclays when it audited the Acquisition Balance Sheet Barclays prepared for the Lehman Brothers acquisition?

A. My opinions are in my report. I don't know what you mean by "competent audit." I don't have an opinion on the -- I didn't undertake to study what PwC did in its audit of the opening balance sheet in total.

Q. Well, my question is do you have an opinion as to whether PwC properly exercised proper professional -- let me try to rephrase that.

When you say you don't know what I mean by competent audit, you are a qualified CPA, correct?

A. I am a CPA, yes.

Q. And you are putting yourself out as an expert in auditing and accounting?

A. Correct.

Q. Both auditing and accounting?

A. Correct.

Q. Have you reviewed PwC's auditing of the Barclays Acquisition Balance Sheet relating

J. Garvey

to the Lehman Brothers acquisition?

A. I don't know what you mean by reviewed their auditing. I reviewed some of the PwC work papers, yes.

Q. Do you feel that you have conducted a sufficient review to have an opinion one way or another as to whether PwC committed any form of professional malpractice in its auditing of the Barclays Acquisition Balance Sheet for the Lehman Brothers acquisition?

MS. CARRERO: Object to the form of the question.

A. I didn't undertake to do that and I don't have any opinion about PwC's conduct in this audit.

Q. Do you have any opinion about whether PwC made any professional errors in its auditing of the Barclays Acquisition Balance Sheet for the Lehman Brothers acquisition?

A. I don't have an opinion about whether PwC made professional errors.

Q. Can I hand you, please, what has been marked as your report as Exhibit 705.

(Exhibit 705, Expert Report of John P.

J. Garvey

Garvey dated March 15, 2010, marked for identification, as of this date.)

Q. I would like to refer you first, Mr. Garvey, to paragraph 13 of your report where you talk about the term "book value" being used interchangeably with Lehman's marks. Do you see that paragraph?

A. I do.

Q. And you then say, "The source of Lehman's marks is a central database system for pricing and other data called Lehman Global Funding System," do you see that?

A. Yes.

Q. Where did you learn that information?

A. I learned that from studying the record.

Q. What do you mean by that?

A. Well, I learned that from many of the documents that I reviewed as well as the depositions that I read.

Q. Can you be more specific? Can you remember anything specifically that alerted you to the GFS system?

A. I think I have a footnote that says

J. Garvey

"GFS is Lehman's Global Funding System, a global data warehouse." You can read it, but -- and there's a document cited there.

Q. Did you discuss the GFS system with anybody in preparing your report?

A. I discussed it with my colleagues, discussed it with counsel.

Q. Other than counsel, when you say your colleagues, what do you mean by that?

A. Well, we had many people working on this case.

Q. And remind me, where are your colleagues? What's the name of your firm?

MS. CARRERO: Objection to form.

A. What is the name of our --

Q. When you say "colleagues," do you mean at Chicago Partners?

A. At Navigant Economics, formerly known as Chicago Partners, yes.

Q. Other than your colleagues there or counsel, did you discuss the GFS system with anybody else?

A. I don't think so.

Q. In other words, did you discuss it

J. Garvey

with anyone currently employed by either of the Lehman estates?

A. I did not personally.

Q. Do you know whether any of your colleagues did?

A. I don't know the answer to that. They may have.

Q. And do you know whether you or any of your colleagues discussed it with anyone working in the Transition Services Agreement? Are you familiar with what that is?

A. I'm familiar with what that is, yes.

Q. And just the same question: Do you know whether you or any of your colleagues discussed the GFS system with anyone working under this TSA arrangement?

A. I did not. Some of my colleagues may, but I don't know any of the specifics.

Q. Do you know, regardless of the specifics of the conversation, did you learn from your colleagues anything about how the GFS system works?

A. Anything about how the GFS system works? I understand it. It works according to

J. Garvey

what I have in this report. It was the central database pricing system.

Q. And it's your understanding that it was the system that you would look to to learn what Lehman's marks were on any given day?

MS. CARRERO: Objection to the form of the question.

A. As a general premise, yes.

Q. And did you understand that it -- that there were different components of the GFS system, a component for the Fixed Income Division and a component for the Equities Division, are you familiar with that?

A. I don't know what you mean by "component." I know there were different asset classes being valued by the system.

Q. Yes, the word "component" may be the wrong word. Just that did you know that there were different parts of the system for different divisions within the company?

MS. CARRERO: Objection to the form of the question.

A. Yes, I don't know the distinction between "component" or "part." I know that

J. Garvey

there were different asset classes.

Q. Do you have any opinion, Mr. Garvey, as to whether the GFS system was accurate, materially accurate, as of September 12, 2008?

MS. CARRERO: Objection to the form of the question.

A. Yes, I'm not sure what your definition of "material" is.

Q. I'm simply trying to ask you whether it's your understanding that the GFS system was the most accurate source for Lehman's marks on its inventory of financial assets as of September 12, 2008?

MS. CARRERO: Objection.

A. I didn't study the GFS system at length. My opinion would be if you wanted to figure out what Lehman's marks were, the GFS system was the best place to find that out.

Q. Let me refer you to paragraph 14, and you're referring here again to the term "book value"?

A. Right.

Q. Do you have an opinion as to whether or not the term "book value" is a more

J. Garvey

accurate -- strike that.

Does the term "book value" in your professional opinion have the same meaning as "carrying value"?

A. Not necessarily. And I don't know what your definition of "carrying value" is, but...

Q. Can you tell me what, if any, difference might exist between the term "book value" and the term "carrying value"?

A. I don't know.

Q. Can you tell me what your understanding is of the term "carrying value"?

A. I have no understanding of the term "carrying value" as you used it.

Q. Do you have an opinion as to whether the term "carrying value" is a defined term of art within GAAP to refer to the marks on an institution's balance sheet?

MS. CARRERO: Objection to the form of the question.

A. I didn't understand your question.

Q. Can you define your understanding of the term "book value"?

J. Garvey

A. My understanding of the term "book value" is defined in my report. It's the value reported in the books at any point in time, books and records.

Q. Let me refer you to paragraph 16 of your report.

A. Yes.

Q. You say there that, "This section highlights several flaws and inconsistencies in the valuation methods Barclays employed."

A. Yes.

Q. Do you consider yourself an expert in valuation?

A. I have been qualified and have testified in certain matters related to valuation.

Q. Are you a valuation expert or are you an accounting expert?

A. I believe I'm -- my report states that I'm an expert in accounting, auditing and valuation. I did not attempt for purposes of this report to value any of the securities, if that's what you're asking me.

Q. Paragraph 18, you make a reference to

J. Garvey

not valuing securities on Schedule A and B on the closing date.

A. Yes.

Q. I, at least, could not find a definition of the term "closing date" in your report. Do you know if you have one?

A. I don't know if I've defined it, but I have certain references to the closing date in this report.

Q. And what is your definition of "closing date" as used in your report?

A. The closing date is defined in my report according to -- I don't have the reference, but it's 12:01 A.M. after the closing, which I think is September 19 or over the weekend. The 20th -- I think the deal closed on September 19th, and I believe that the closing date is defined in this report in footnote 24.

Q. Where in footnote 24 does it define the closing date?

A. Last bullet.

Q. It uses the term "closing date," but it doesn't define closing date?

J. Garvey

MS. CARRERO: Is there a question in there?

MR. HUME: That's a fair point.

Q. Can you tell me how the last bullet point defines the phrase "closing date"?

A. Well, it speaks for itself. It says, "Unless" -- do you want me to read it?

Q. I would like you to tell me what the definition of the closing date is that you believe the last bullet point provides.

A. "Unless otherwise agreed by the parties in writing, the closing shall be deemed effective, and all right, title and interest of seller to be acquired by purchaser hereunder shall be considered to have passed to purchaser as of 12:01 A.M. New York time on the closing date."

Q. And that references the closing date, but I don't believe it defines closing date.

In terms of an actual calendar day, I believe you said a moment ago that your understanding of the closing date was September 19; is that correct?

MS. CARRERO: Objection to the form of

J. Garvey
the question.
A. That's my understanding, yes.
Q. And what is your understanding of the closing?
MS. CARRERO: Objection to the form of the question.
Q. What does it mean to say the deal closed?
A. I think it's defined in the bullet I just read.
Q. Can the deal close before all the documents are finished and signed?
MS. CARRERO: Objection to the form of the question.
A. I'm not a lawyer. That requires a legal conclusion.
Q. Well, but I'm not -- I'm asking you for your understanding of what the closing is in order to understand what the closing date is.
MS. CARRERO: Objection.
A. September 19.
Q. The closing date is September 19?
A. Yes.
Q. What is the basis for your

J. Garvey
understanding of that?
A. Everything I reviewed and the things I've outlined in this report.
Q. And is it therefore your opinion that the assets Barclays acquired should be valued as of September 19, 2008?
A. I believe that's the correct closing date, measurement date and valuation date, yes.
Q. And is that opinion based on the understanding that September 19, 2008 was the date of closing?
MS. CARRERO: Objection to the form of the question.
A. It's based on my understanding that that was the date of the closing, yes.
Q. And is it your understanding that the assets should be valued as of the open of the business on September 19, 2008 or the close of business on September 19, 2008?
MS. CARRERO: Objection to the form of the question. If we can take a break for a second to clarify something because I think this line of questioning is --
If we can do this off the record.

J. Garvey
COURT REPORTER: Do you want to go off the record?
MR. HUME: No.
MS. CARRERO: I think that this line of questioning is misleading because I think that there is just an error in the closing date issue that --
MR. HUME: I think your witness has made an error in his testimony. There's nothing misleading about my questioning.
MS. CARRERO: Well, I think it's misleading in that my witness has testified that the measurement date is September 19, and I think that we're going down a road where I'd like to just talk to my witness first and ask him a question to make sure that he understands the question.
MR. HUME: Okay.
(Ms. Carrero confers with the witness.)
MR. HUME: Back on the record. Okay. Let the record reflect that the witness has conferred with his counsel here in the deposition.

J. Garvey
BY MR. HUME:
Q. And would you now like to correct any of your testimony, Mr. Garvey?
A. No.
Q. Let me move on to paragraph 25 of your report. In paragraph 25, you say that, "A majority of the" -- well, perhaps it would be easier if we back up to paragraph 22. You understand that certain assets that Barclays was valuing were valued based upon sales information based upon sales that occurred shortly after closing, correct?
MS. CARRERO: Objection to the form of the question.
A. Yes, I don't know what you mean by "shortly," but I am aware that certain assets were valued after the 19th based on sales, purported sales prices, yes.
Q. In paragraph 21 you say that, "The use of September 30, 2008 is the measurement date for certain securities is confirmed by a Barclays document." Do you see that?
A. Yes.
Q. Was September 30, 2008 used as a

J. Garvey

measurement date or was it used as a cut-off date for determining whether sales information would be used?

MS. CARRERO: Objection to the form of the question.

A. I think it was used in certain instances as a measurement date and in certain instances as a cut-off date.

Q. And is the basis for that opinion the documents cited in the footnotes in paragraph 21 of your report?

A. I think that and there may be other documents, but that is the one we cited.

Q. Now, have you reviewed, even at a summary level the nature of the assets, the type of assets Barclays acquired in this transaction?

A. At a summary level, yes.

Q. Would you agree with me that some of those assets were illiquid, by which I mean they did not have a daily trading price that could be observed?

MS. CARRERO: Objection to the form of the question.

A. I agree that there were certain

J. Garvey

securities that may not have a -- may not have had a daily price that could be observed.

Q. And for terminology sake, it may be helpful if I can -- if we can agree that when I ask you whether an asset is illiquid, by that I mean, obviously there are degrees of liquidity, but if an asset did not have a daily observable trading price during the week of the sale, that you literally could not look up any price, would you agree that that kind of asset would be illiquid?

A. The fact that you couldn't see the price may be an indicia of it not being liquid.

Q. Let's put aside that definition, then, and let me ask the question this way: For an asset that did not have an observable trading price on the date of closing, would you agree that the best information about the value of that asset is the actual sales price of that asset if it sold within one week of closing?

MS. CARRERO: Objection to the form of the question.

A. I, as a hypothetical matter, if that's what you're asking me, I'm not sure I would

J. Garvey

agree with that. It would depend on other facts and circumstances.

Q. Okay. Well, I'd like to understand exactly what facts and circumstances you think would maybe make that not true or true in some circumstances.

A. Well, it would depend on, for starters, who you sold it to, whether you sold it to an external party or an internal party. It would depend on how long it was, the time period. It would depend on whether or not anything fundamentally changed with respect to that security in the time from closing to this hypothetical one week -- I think you used one week later.

Q. Yes.

A. Those are things I can think of.

Q. So let's break that down and just make sure I understand. For a structured financial product which is not traded on a public exchange and does not have an observable price in the market, what in your opinion is the methodology that should be used to value that product as of the closing?

J. Garvey

MS. CARRERO: Objection to the form of the question.

A. You know, I'm not -- I relied on other experts to actually do the valuation, but I can -- I could tell you that for a structured product you'd have to look at the product and understand the structure and build a model and try to value -- you could value the product as of the closing date based on building a model that understood the structure or the structured product.

Q. What if the structured product entitles the holder to receive a thousand dollars a year for ten years, to simplify it, but right now there's no observable trading price for that product, should you simply take the thousand dollars a year for the next ten years and discount it to present value to determine its value or should you also look at the strength of the collateral, the likelihood of the payor to actually be liquid and be able to pay?

MS. CARRERO: Objection to the form of the question.

J. Garvey
A. I'm not a valuation expert in structured products, but I would -- I would think that you, at a very high level, would look at the cash flows, the correct discount rate, and then the collateral and the ability to pay, the other risks related to it. But that's not my area of expertise.
Q. Do you have an opinion one way or the other as to whether the ability of the payor to pay was relevant to the effort by Barclays to value the different kinds of structured financial products it received in this transaction?
MS. CARRERO: Object to the form of the question.
A. I don't understand the question.
Q. Well, do you believe factors such as the strength of the collateral and the ability of the payor to pay on a structured financial product was relevant to the Barclays valuation of the structured financial products it received in this transaction?
A. I didn't undertake to study that. I know other people did. I don't have an opinion

J. Garvey
on that because I didn't -- that's not what I was asked to do.
Q. Do you have an opinion one way or the other as to whether different kinds of structured financial products received by Barclays in this transaction would need to be valued differently based upon the nature of the collateral and the nature of the parties responsible for making payment under that product?
MS. CARRERO: Objection to the form of the question.
A. I didn't study that. I don't have an opinion on that.
Q. What is your understanding, going now back to paragraph 25, what is your understanding of the internal transfers that Barclays relied upon to determine the sales that were relevant to determining values for some of the products it acquired?
MS. CARRERO: Objection to the form of the question.
A. My understanding is outlined in paragraph 25; that a majority of the sales were

J. Garvey
realized from internal sales and that that understanding is driven by the document that's footnote 33, Exhibit 533A.
Q. Do you have any understanding whether those internal transfers are -- strike that. What is your basis for believing that those internal transfers are not an accurate source for determining the value of the securities being transferred?
MS. CARRERO: Objection to the form of the question.
A. I'm not sure that's my testimony. My testimony is that Professor Pfleiderer failed to acknowledge that in his report and in his deposition testimony, and the GAAP would tell you, 157 specifically, that if you are doing internal transfers, that is an indicia that they might not be arm's length and someone should study that and try to figure that out.
Q. But you haven't studied it to determine whether or not they are arm's length or not?
MS. CARRERO: Objection to the form of the question.

J. Garvey
A. I have not undertaken that study, no.
Q. I just want to make sure I understand your opinion on the relevance of sales that are not internal sales but to external parties and that occurred before September 30, 2008. So let me --
MS. CARRERO: Objection.
Q. -- just try to make sure the questioning is clear.
Is it your understanding that Barclays valued some of the securities it received in this transaction by looking to sales data when it sold the securities in question before September 30, 2008?
MS. CARRERO: Objection to the form of the question.
A. I have a general understanding that certain securities were valued at the sales value before or on September 30, between the closing date and September 30.
Q. And is it your understanding that Barclays only used that sales price when the sale occurred on or before September 30, 2008?
A. That's my general understanding, yes.

J. Garvey

Q. And do you think that is inappropriate?

A. Yes.

Q. And why do you think that?

A. Because you have to value the securities on the measurement date.

Q. And --

A. Which is the closing date.

Q. And if there is no observable pricing data on the closing date, isn't the best source of information the sale price that you actually realized within a week after the closing?

MS. CARRERO: Objection to the form of the question.

A. I already answered this question. Not necessarily.

Q. And one of your reasons not necessarily was the sale might have been internal, which we've talked about. So now let me limit my question to sales that are not internal.

If there's no observable price in the market on the closing date, but you have an external sale to an outside party within the

J. Garvey

week immediately following the closing, isn't that sale price the best indicia of the value of that asset on the closing date?

MS. CARRERO: Objection to the form of the question.

A. It would be one indicia. It would depend on other facts and circumstances.

Q. Do you agree that under certain circumstances it may be the best indicia of the value of an asset as of the closing?

A. As a hypothetical matter?

Q. Yes.

A. It would depend on all the facts -- other facts and circumstances, but it could -- that's a possibility.

Q. In other words, if you had a security where there was significant doubt about its value because of the value of its collateral, the ability of a payor to pay, the complexity of the product and the fact that no one was trading in it, would you agree under those circumstances that the actual sale realized within a week after closing is the best indicia of the value of that product as of the closing?

J. Garvey

MS. CARRERO: Objection to the form of the question.

A. Yes, I mean, under your hypothetical, that is a possibility. It would depend on whether there are other facts and circumstances that changed in the intervening period.

Q. For the population of securities that Barclays decided to value based upon sales to external parties that occurred before September 30, 2008, do you have an opinion whether the facts and circumstances relating to those securities make it appropriate to use the sales data as the best indicia.

MS. CARRERO: Objection to the form of the question.

A. My opinion is that it's not -- it's not -- that's not necessarily what you should do, and Professor Pfleiderer just sort of accepts that without any study of it. That's my opinion.

Q. Putting aside Professor Pfleiderer, I just want to know whether you have reviewed CUSIP-by-CUSIP the securities for which Barclays valued as of the closing based upon a sale to an

J. Garvey

outside party between the closing and September 30, have you reviewed them to determine whether, under the circumstances of those CUSIPs, that was an appropriate methodology?

MS. CARRERO: Objection to the form of the question, and I believe this has been asked and answered several times.

Q. You can answer.

A. I did not do a CUSIP-by-CUSIP review.

Q. Did you review any of the CUSIPs that Barclays valued by looking at sales data to outside parties before September 30, 2008?

A. I reviewed some of the values of the CUSIPs. I can't recall which ones.

Q. Do you recall right now whether you reviewed any CUSIP that was valued by Barclays using sales data to outside parties before September 30, 2008?

A. I recall looking at them generally. I can't recall as I sit here today a CUSIP.

Q. Did you form an opinion of whether or not under the facts and circumstances of the specific CUSIPs involved whether Barclays correctly decided to value certain CUSIPs by

J. Garvey

looking at sales data to outside parties before September 30, 2008?

MS. CARRERO: Objection to the form of the question.

A. I didn't understand that question. It's way too long.

Q. I just want to know whether you looked at the actual CUSIPs Barclays valued using this methodology by looking at sales data to outside parties before September 30, 2008 and reached a conclusion one way or another as to whether, under the facts and circumstances of those CUSIPs, doing so was appropriate?

MS. CARRERO: Objection to the form of the question.

A. I think that was the last three questions just in one, and my answer stands.

Q. What is your answer?

A. That I looked at some CUSIPs, I don't recall which CUSIPs I looked at, but I don't have a CUSIP-by-CUSIP opinion related to the question you just asked me, which is too long to restate.

Q. Do you know whether, going back to the

J. Garvey

internal transfers within Barclays, do you know what Paul Pfleiderer did to analyze whether it was appropriate to look at those internal transfers as an indicia of the value of the securities?

MS. CARRERO: Objection to the form of the question.

A. I only know what he said in his deposition, which, as I recall, he didn't look at them.

Q. Turning to your discussion of Annex A, you understand Annex A to be the list of securities Barclays received in its settlement with JPMorgan and the Lehman Trustee in December 2008?

MS. CARRERO: Objection to the form of the question.

A. My understanding is what I wrote here, but that's a general summarization.

Q. Is it your understanding that Barclays on its Acquisition Balance Sheet should have recorded the full value of everything it believed it was entitled to as of the closing --

MS. CARRERO: Objection to the form of

J. Garvey

the question.

Q. -- from JPMorgan?

MS. CARRERO: Objection.

A. It should have valued the JPMorgan's securities as of the closing date, which is the measurement date, yes.

Q. And what are the JPMorgan securities?

A. What are they?

Q. Well, how would Barclays have done that as of the closing? Did it know what they were?

A. As of what date?

Q. As of the closing date.

A. I believe that they -- I don't know specifically the timeline, but I believe that they had a general understanding and they knew what they were as of December 22.

Q. Okay. So on December 22, 2008, Barclays received what we're calling the JPMorgan securities; is that the --

A. I thought we were calling them Annex A.

Q. As of December 22, 2008, Barclays knows the identity of the securities on Annex A,

J. Garvey

correct?

MS. CARRERO: Objection to the form of the question.

A. I think they knew before that, but they get them for sure on the 22nd.

Q. What's your basis for believing they knew them before then?

A. What's in the record.

Q. Where in the record?

A. Well, I can't recall specifically, but I know there's been testimony that said that they knew what they got at the closing, but there were just operational concerns related to getting them to -- from JPM to Barclays.

Q. Okay. Well, let's talk about that. So is your understanding that, as of the closing, Barclays expected to receive the securities on Annex A as part of the acquisition?

MS. CARRERO: Objection to the form of the question.

A. I don't know if it was as of the closing, but it was before December 22 because there were negotiations going on.

J. Garvey

Q. Well, but let me ask you very precisely so I understand what your opinion is. As of the closing, did Barclays believe it was entitled to receive the securities listed on Annex A?

MS. CARRERO: Objection to the form of the question.

A. I think you'd have to ask Barclays. I don't know what --

Q. Is it relevant to your opinion of what Barclays should have booked on its Acquisition Balance Sheet whether Barclays believed as of the closing that it was entitled to the securities on Annex A?

A. Whether -- you have to repeat that question.

Q. Is it relevant to your opinion of what Barclays should have booked on its Acquisition Balance Sheet whether Barclays believed it was entitled to all securities listed on Annex A as of the time of closing?

A. No.

Q. Is it relevant to your opinion as to what Barclays should book on its Acquisition

J. Garvey

Balance Sheet what Barclays believed it was entitled to generally as of the closing?

MS. CARRERO: Objection to the form of the question.

A. Generally, not necessarily, no.

Q. Do you have an understanding one way or the other of whether Barclays believed at the time of closing that it was entitled to receive Annex A securities or $7 billion in cash?

MS. CARRERO: Object to the form of the question.

A. Yes, I believe that the record is a little bit confusing there, so I don't have a belief either way as to what Barclays believed.

Q. And your opinion is it doesn't matter, it doesn't impact your opinion either way whatever they believed?

A. My opinion with respect to the correct valuation date for the Annex A securities stands as it is, that --

Q. And it stands irrespective of whether Barclays believed it was entitled to receive those securities as of the closing versus something else?

J. Garvey

A. Yes.

MS. CARRERO: Object to the question.

Q. And your opinion is based upon the fact that the Annex A securities are what Barclays ultimately did receive in December, correct?

MS. CARRERO: Objection to the form of the question.

A. It's just a fact. My opinion is my opinion.

Q. Your opinion is based upon the fact that in December 2008 Barclays did in fact receive the securities on Annex A?

MS. CARRERO: Objection to the form of the question.

A. That's part of -- that's a fact that was considered in my opinion, yes.

Q. And then you take that fact, and your opinion is because Barclays actually received those securities, it should take the value of those securities as of the closing date and book that value on its Acquisition Balance Sheet; is that correct?

MS. CARRERO: Object to the form of

J. Garvey

the question.

A. That's a summarization. My opinion is that December 22 was not the correct measurement date and valuation date; that September 19 was the correct measurement date.

Q. Now, I just want to make sure I understand this so I'm going to ask you a hypothetical.

A. Okay.

Q. If Barclays believed as of the closing that it was entitled to $7 billion in cash from JPMorgan, and there was then a dispute about that that was resolved in December through the transfer of securities to Barclays, is it your opinion that Barclays should be required on its Acquisition Balance Sheet to book the value of those securities as they were on September -- on the date of the closing?

MS. CARRERO: Objection to the form of the question.

A. The measurement date is the date of the closing, so you would value them then, yes.

Q. And so if, for example, JPMorgan had taken not the securities on Annex A but

J. Garvey

securities that were worth -- this is a hypothetical question. If JPMorgan had settled the $7 billion dispute in December 2008 by taking securities that were worth a thousand times more than they were worth in December 2008 -- let me try to get the question stated properly.

If in December 2008 JPMorgan had settled the $7 billion dispute by taking securities that in September 2008, as of the closing, were worth a thousand times more than they were worth in December 2008, is it your opinion, Mr. Garvey, that Barclays would be required to book on its Acquisition Balance Sheet the value of those securities in September, which were a thousand times greater than what it actually received in December?

MS. CARRERO: Objection to the form of the question.

A. Recognizing that this is a hypothetical matter and, at least in my opinion, a very silly hypothetical, my answer is they should value them as of September 19.

Q. Does it become less of a silly

J. Garvey

hypothetical if I change the thousand to triple? So I say JPMorgan takes securities to settle a claim. Let's say they take a Russian Equity Index that had dropped 70 percent from September as of the closing date to December, and they used those securities to settle the $7 billion claim.

Would Barclays be required to book on its Acquisition Balance Sheet triple the value of what it received in December because that's the value those securities had in September 2008 as of the closing?

MS. CARRERO: Objection to the form of the question.

A. Yes, recognizing that it's a hypothetical, and I still think it's silly, the answer is yes, you would book them as of September 19.

Q. Why do you think it's silly?

A. Well, because you don't -- commercial transactions don't get settled at 3X, generally, or a thousand X. But it's a hypothetical, so I'll accept it.

Q. I didn't say the settlement was at 3X.

J. Garvey

I said settlement had the exact value it did, which Barclays believes was basically $5 billion to settle a $7 billion claim. In my hypothetical that is still the case. The value of what Barclays received in the settlement was $5 billion. Let me make that clearly part of the hypothetical.

A. Okay.

Q. So Barclays received securities worth $5 billion in December 2008, but those securities were worth $15 billion as of the closing date. Am I correct that it is your opinion that Barclays should be required on its Acquisition Balance Sheet to book the securities it received in the JPMorgan settlement at $15 billion even though they only were worth $5 billion when received in December?

A. Yes.

MS. CARRERO: Objection to the form of the question.

Q. Let's turn to the part of your report that deals with valuation adjustments and haircut.

A. Okay.

J. Garvey

Q. You state in paragraph 33 that Barclays intended to record the securities acquired from Lehman at exit price marks, do you see that?

A. Yes.

Q. And you state in paragraph 35 in the sentence that carries over to the top of page 13, "Fair value accounting rules under U.S. GAAP allow the practice of marking from mid to bid in an effort to approximate an exit price." Do you see that?

A. Yes.

Q. Isn't it in fact the case that U.S. GAAP requires a broker-dealer to mark the securities it receives at the bid price, and does not allow them to mark it at the mid price?

MS. CARRERO: Object to the form of the question.

A. I think, as a general rule, you're supposed to mark long positions at the bid price, yes.

Q. And is it your understanding that that general rule applied to the securities that Barclays acquired in this transaction?

J. Garvey
A. Well, it's not as explicit under the IAS rules, but I think that's what Barclays intended to do when it did its valuation.
Q. When you say they intended to do it, is it your understanding that Barclays was required to do that under the accounting rules?
A. They would be required if they were a U.S. reporter. Under the IAS rules, it's not as specific.
Q. Is it your opinion that under -- you say IAS. Is that the same as IFRS?
A. Yes, the international standards.
Q. Is it your opinion that under those International Accounting Standards that apply to Barclays, that Barclays was not required to mark the securities it received in this transaction at the bid price?
MS. CARRERO: Object to the form of the question.
A. It's my opinion that it's not as explicit.
Q. However it's framed in the actual rule, I just want to know whether you have a professional opinion that you're going to offer

J. Garvey
as an expert in this case as to whether Barclays had the discretion to value the assets it received in this transaction on its financial statements at something other than the bid price?
A. I don't have that opinion.
Q. So when you say that the accounting rules allow this practice, wouldn't it be more accurate to say that the accounting rules require this practice?
MS. CARRERO: Object to the form of the question.
A. I don't think the international accounting rules require it. If you can point me to where it requires it, I'm happy to change my opinion.
Q. So you don't think the accounting rules require it, so does that mean you do think Barclays had discretion to mark it at something other than the bid price?
MS. CARRERO: Object to the form of the question.
A. I answered -- I answered the first opinion, and that stands. The second opinion is

J. Garvey
I know -- my answer is I know nothing in the IAS rules that require marking to bid.
Q. Okay.
A. And that's my only -- I mean, that's my opinion.
Q. You don't know of a specific requirement, but you're not offering an expert opinion that Barclays had the discretion to do something other than bid price?
MS. CARRERO: Object to the form of the question. I think this is asked and answered.
Q. I just want to make sure it's clear.
A. Well, you have to ask that question again because that's a different question.
Q. Maybe not. I just want to make sure I'm giving you an opportunity to change what you said earlier, which is, is it your professional opinion that you're going to offer as an expert in this case that Barclays had the discretion to value the assets it received in this transaction on its financial statement at something other than the bid price?
MS. CARRERO: Same objection.

J. Garvey
A. I am not going to offer that opinion.
Q. You then go on to say at the top of page 13 that, "The practice of marking from mid to bid yields a conservative measure of fair value." Do you see that?
A. Yes.
Q. You go on to say, "Such conservative measures of fair value recorded by Barclays on the Acquisition Balance Sheet serve to understate the value of Barclays' windfall rather than overstate the value of Barclays' windfall," do you see that?
A. Yes.
Q. Before we get to what Professor Pfleiderer says, let me make sure I'm clear on this. Is it your testimony, sir, that United States GAAP causes all United States broker-dealers to understate the value of the inventory they carry on their balance sheets?
MS. CARRERO: Object to the form of the question.
A. That's not an opinion that is in my report and I don't have that opinion.
Q. And therefore, isn't it the case that,

J. Garvey
by marking to bid, Barclays is not understating the value of the assets it received in this transaction?
MS. CARRERO: Object to the form of the question.
A. My opinion is that it's a conservative measure that could understate the windfall that they received by marking from mid to bid, that's my opinion.
Q. When you say could understate the windfall?
A. Right.
Q. It can't understate the windfall unless it understates the value of the assets themselves, correct?
MS. CARRERO: Object to the form of the question.
A. If it -- it cannot understate -- no, I mean, they can understate the windfall by having this conservative valuation, and this is a comparison to Mr. Pfleiderer, who says that the value of the assets at bid overstate the value and the windfall's overstated.
Q. I'm going to ask you and give you an

J. Garvey
opportunity to talk about what Professor Pfleiderer says, but first I want to make sure I understand this "understate the value" point.
Given that the accounting rules require the marking of assets to bid, is it really your opinion that by applying that adjustment to bid pricing, Barclays is understating the value of the assets it received?
MS. CARRERO: Object to the form of the question.
A. That is not my -- my opinion doesn't say that. I'm happy to read it into the record again so there's no confusion.
Q. Okay. So your opinion is in comparison to what Professor Pfleiderer says?
A. Yes.
Q. Okay. And your understanding is Professor Pfleiderer says that the accounting rules overstate the value of Barclays' windfall?
A. Yes.
Q. Now, you then quote Professor Pfleiderer in paragraph 36 and 37.
A. Yes.

J. Garvey
Q. So let me make sure I understand your opinion on that. If a broker-dealer carries a portfolio of financial securities -- let me ask it in the form of a hypothetical to make sure that I understand what you're saying.
Let's assume a broker-dealer has $50 billion exactly of a range of different financial securities on its financial statements. Let's assume they are accurately valued at their bid or exit price. Does that make sense?
A. As a hypothetical matter?
Q. Yes.
And let's assume those securities range from government Treasuries to illiquid structured financial products.
A. Okay.
Q. In the same manner as the inventory that Barclays received in this transaction.
A. Okay.
Q. Would you agree that if that broker-dealer is required or forced by circumstances to sell that entire portfolio in a very short amount of time of a week or less in

J. Garvey
the middle of a financial crisis, it is likely to receive substantially less than $50 billion for that portfolio?
MS. CARRERO: Object to the form of the question.
A. I don't know.
Q. You don't have an opinion on that?
A. No.
Q. So let me add to the hypothetical assumption. Let me ask you to assume that it is the case that if the broker-dealer has to liquidate the entire portfolio by selling it within a matter of days, it will receive cash of less than $50 billion because it is selling it all at once in a financially distressed market.
If that is true, even if that assumption I just asked you to assume is true, am I correct that the accounting rules do not allow you to mark down the portfolio to reflect that liquidation risk?
MS. CARRERO: Object to the form of the question.
A. Your hypothetical is hard to follow, but the accounting rules don't allow you to

J. Garvey

record block discounts, which I think you're trying to talk about.

Q. That's correct.

A. Okay.

Q. So you agree with that, that the accounting rules don't allow you to record block discounts?

A. Yes, I would agree with that, yes.

Q. Do you understand Professor Pfleiderer to be saying anything other than that?

A. Anything other than your hypothetical?

Q. Well, anything other than the fact that the amount booked on the Barclays balance sheets does not reflect a block discount?

MS. CARRERO: Object to the form of the question.

A. I don't -- I think his testimony and his report speak for themselves. He said a lot of things. I don't, you know, you'd have to read it to -- I mean, I think he said a lot of things. He talked about block discount, liquidity, crisis in the marketplace. I mean, he said all kinds of things.

Q. To the extent that Professor

J. Garvey

Pfleiderer is saying that the bid prices on the inventory Barclays received is not reflective of the risk of having to sell the entire portfolio in bulk and, therefore, may state a higher value than if the portfolio had to be sold in bulk, do you disagree with that?

MS. CARRERO: Object to the form of the question.

A. As a hypothetical matter, no, I mean, I don't disagree with that. The question is whether or not you actually had to, but ...

Q. Can you describe for me how you went about analyzing the way in which Barclays made the bid/offer adjustments to the assets it received in this transaction?

MS. CARRERO: Object to the form of the question.

A. I think it's in my report.

Q. Just the general process you underwent to try to understand what happened.

A. We looked at all the documents that are noted in this report and analyzed their bid/offer and other, you know, haircuts and liquidity adjustments.

J. Garvey

Q. You understand that, in principal, what Barclays tried to do was determine a mid price for each asset and then adjust to a bid price or an exit price?

MS. CARRERO: Object to the form of the question.

Q. Is that your understanding?

A. At a very high and general level, yes.

Q. And you don't disagree conceptually with adjusting to a bid price, but you do disagree with some of what Barclays did in terms of how it adjusted to bid price, is that fair?

A. I don't agree -- disagree with the principle, but there were lots of inconsistencies and things that were done wrong, yes. That's what my report says.

Q. In terms of inconsistencies, do you believe there should be one method used, and only one method used, for adjusting to bid prices on the assets Barclays received in the transaction?

A. No.

MS. CARRERO: Object to the form of the question.

J. Garvey

A. My point is that they had methods within asset classes and policies and they were inconsistent in applying those policies.

Q. Do you believe that within each asset class there should be only one methodology for adjusting to bid prices?

A. As a hypothetical matter, no.

Q. Why not?

A. Well, because there may be good reasons to do it several ways, as a hypothetical matter.

Q. Can you give me an example?

A. No.

Q. You can't or you won't?

A. I just don't know. I mean, I don't -- I don't know what you're trying to -- I mean, I just answered your question. I don't have any specifics, but ...

Q. Would one reason be, if within an asset class there are some CUSIPs for which there is observable data with bid and ask data and there are other CUSIPs for which there is no observable data providing bid and ask information, in that situation would it make

J. Garvey

sense to determine the bid price differently within the same asset class?

MS. CARRERO: Object to the form of the question.

A. As a hypothetical matter, yes.

Q. In other words, for CUSIPs where there is actual bid/ask information available, would you agree that the actual bid information should be used to determine the bid price for those CUSIPs?

MS. CARRERO: Object to the form of the question.

A. As a general matter, yes.

Q. And for CUSIPs for which there is no bid/ask information available, would you agree that you might have to use some other methodology to determine the bid price?

MS. CARRERO: Object to the form of the question.

A. As a general matter, yes.

Q. Is it your understanding that that's what Barclays did?

MS. CARRERO: Object to the form of the question.

J. Garvey

A. That question isn't clear. You're asking me did with respect to what?

Q. Well, you understand with respect to corporate debt, corporate obligations, there was bid information available and, therefore, Barclays used that information? Are you aware of that or not?

MS. CARRERO: Object to the form of the question.

A. Am I aware that for certain corporates there may have been bid information available?

Q. Yes.

A. I think that's true.

Q. And you don't have a problem with Barclays using that bid information?

MS. CARRERO: Object to the form of the question.

A. To the extent bid information was available and it was reliable, I don't have any problem with that.

Q. And if there were other securities within the same asset class for which there was no reliable bid information, you would have to use a different methodology to adjust a bid,

J. Garvey

correct?

MS. CARRERO: Object to the form of the question.

A. So same asset class, corporates? If there were no bids available, you would have to try to figure it out some other way, yes.

Q. Would that be an inconsistency?

A. Not necessarily.

Q. You also criticized the Barclays valuation methods for being subjective; is that correct?

A. I believe I said that, yes.

Q. Do you believe it is always incorrect to use subjective judgment in valuing securities of the type Barclays acquired?

MS. CARRERO: Object to the form of the question.

A. I'm not sure my subjectivity relates to judgment, but I don't -- I believe judgment's involved in the valuation process, if that's what you're asking.

Q. Yes. How do you distinguish -- I'm not sure I understand the difference between subjectivity and judgment.

J. Garvey

MS. CARRERO: Object to the form of the question.

A. The distinction I was making is that I think they use subjectivity in certain instances where, you know, that didn't necessarily involve judgment as much as just using a method that, you know, a different method.

Q. I guess my question is if a security is not -- if there is no observable price for a security, and if the objective data suggests there may be a reason to doubt the ability of the payor to pay or the value of the collateral, isn't it necessary to make some form of subjective judgment in determining the value of the asset?

MS. CARRERO: Objection to the form of the question.

A. I think judgment is involved in these valuation decisions.

Q. And that judgment necessarily involves some subjectivity, correct?

MS. CARRERO: Object to the form of the question.

A. Yes, embodied in judgment there's a

J. Garvey
certain element of subjectivity.
Q. In paragraph 48 and 49 --
(Discussion off the record.)
(Recess; Time Noted: 10:54 A.M.)
(Time Noted: 11:06 A.M.)
MS. CARRERO: I think the witness has one answer that he wanted to clarify.
THE WITNESS: Yes, I guess there was -- there may have been -- the record may be confused. So back when we first started, and there's a distinction between the closing date and the measurement date for accounting purposes, and I think we might have been mixing those two concepts.
So while the closing date was 12:01 A.M. on the 22nd, which was a Monday, the measurement date for accounting purposes is the 19th, which is what I was trying to say.
BY MR. HUME:
Q. Is it your testimony that that's what you were trying to say earlier?
A. Yes.
Q. Is it your testimony that your lawyer did not tell you to say that during the break?

J. Garvey
A. My testimony is that my lawyer did not tell me to say that.
Q. Your lawyer did not tell you to say what you just said? You believe you were trying to say the closing date was the 22nd but the measurement date was the 19th?
A. Yes.
Q. Is that correct?
A. Yes.
Q. Did your lawyer bring this to your attention during the break?
A. We discussed it.
Q. Did she tell you that the closing was on the 22nd?
A. No.
Q. So you understood the closing was on the 22nd?
A. I understood that I was -- that the closing was on the 22nd and that my answer wasn't clear.
Q. If the closing is on the 22nd, why is the closing date the 19th?
A. The closing date is not the 19th. The measurement date for accounting purposes is the

J. Garvey
19th, and that's the distinction I was trying to make and I hadn't made clear.
Q. When you said earlier in this deposition that the closing date was the 19th, you meant to say the 22nd?
A. I meant to say the measurement date was the 19th for accounting purposes.
Q. If the closing date is the 22nd, why is the measurement date the 19th?
A. Because the measurement date is the -- the measurement date is the 19th, according to the record.
Q. The record?
A. Yes.
Q. What in the record says that the closing date is different from the measurement date?
A. The record doesn't say that. That's my opinion, that the measurement date for accounting purposes would be the end of business Friday, the 19th.
Q. What do you base your opinion on that the measurement date is different from the closing date?

J. Garvey
A. I didn't -- my opinion is that the closing date is the closing date, and that's 12:01 on the 22nd, and the measurement date for accounting purposes is the 19th.
Q. And what is it in the record that you base your opinion on that the measurement date is different from the closing date?
MS. CARRERO: Objection to the form of the question.
A. It's based upon my understanding of the rules and my understanding of the record. That's my opinion.
Q. When you say your understanding of the rules, what rules are you referring to?
A. The accounting rules for business combinations.
Q. And what specific rules are you relying on?
A. It's based on my experience and my understanding of the accounting rules and my understanding of the record. I mean, there was a lot of discussion on the record about this.
Q. Let's do the rules first and then we'll do the record.

J. Garvey

What is it in the rules that requires a measurement date to be different from a closing date?

A. The rules don't state that.

Q. Do they state anything that would support the conclusion that the measurement date should be different from the closing date?

A. I don't believe the rules are specific to these facts and circumstances.

Q. Do the rules say anything relevant at all to why the measurement date should be different from the closing date?

A. The rules talk about the measurement date and how that's defined.

Q. And isn't it normally the case that the measurement date is the same as the closing date?

MS. CARRERO: Objection to the form of the question.

A. I don't know if it's normally the same or not. It depends on the facts and circumstances.

Q. Don't the accounting rules generally require that a purchaser measure the value of

J. Garvey

the assets it receives as of the closing of the transaction?

A. Yes.

Q. And so normally the rules require the closing date to be the same as the measurement date?

MS. CARRERO: Objection to the form of the question.

A. I don't think there's anything in the rules that say that.

Q. Well, isn't that what the rules generally -- isn't that how the rules generally work?

MS. CARRERO: Objection to the form of the question.

A. The rules say what they say.

Q. Other than the rules that say you should value assets as of the time of the closing, are there any other rules relevant to why the measurement date should be different from the closing date?

A. Any other rules relevant? I'm not aware of any rules.

Q. What in the record supports your

J. Garvey

understanding that the measurement date should be different from the closing date?

A. I can't recall specifically anything in the record other than what I have in my opinion.

Q. What do you have in your opinion from the record that supports the closing date being different from the measurement date?

A. Nothing in the record says that exactly. My opinion is that the closing date is 12:01 A.M. on the 22nd and that the measurement date for accounting purposes is the 19th.

Q. Where do you say that in your report?

A. I didn't say that exactly as I just said it in my report.

Q. Do you say anything like that in your report? Do you say anywhere in your report that the measurement date is different from the closing date?

A. I don't believe those words are in my report.

Q. Doesn't your report say that the measurement date should be closing date?

MS. CARRERO: Objection to the form of

J. Garvey

the question.

Q. Let me refer you to paragraph 18. Paragraph 18 says, "Not valuing the securities on Schedules A and B on the closing date of the sale transaction is incorrect."

Aren't you saying there that you should value the securities on Schedules A and B as of the closing date?

MS. CARRERO: Objection to the form of the question.

A. I'm saying that the securities should have been valued on the -- on A and B should have been valued as of the measurement date, which is -- and the fact that they were measured after the measurement date is incorrect.

Q. Why do you not refer to the measurement date in paragraph 18?

A. I don't know why I didn't as I sit here today, but that's what I meant.

Q. So when you wrote "closing date" in paragraph 18, did you mean measurement date or did you mean closing date?

A. As I sit here today I probably meant measurement date and could have been a little

J. Garvey
bit more accurate.
Q. So throughout your report when you talk about the closing date, should we understand you to be referring to measurement date?
MS. CARRERO: Objection to the form of the question.
A. Not necessarily.
Q. So sometimes in your report when you say "closing date" you mean closing date and sometimes in your report when you say "closing date" you mean measurement date?
A. Well, I haven't gone through it to make that determination, but that could be the case.
Q. Let's go to paragraph 49.
A. All right.
Q. You address here the bid/offer adjustments made to the Lehman equity positions acquired by Barclays, correct?
A. Yes.
Q. What is your understanding, generally, of the nature of the assets in these equity positions?

J. Garvey
A. In which equity positions?
Q. All of them, all of the equity positions that were subject to the bid/offer adjustments you address in paragraphs 48 and 49 of your report.
A. Okay.
MS. CARRERO: Object to the form.
A. What is my understanding of them?
Q. Yes. Do you understand that they were all publicly traded S&P 500 equities?
A. I don't have that understanding.
Q. Do you have an understanding of whether many of them were different from that, or do you not have an understanding one way or the other?
MS. CARRERO: Object to the form.
A. I don't have a complete understanding, but I don't think they were all publicly traded S&P 500 equities.
Q. Do you understand that some of them were not publicly traded?
A. I have an understanding that prices weren't available for some of the equities.
Q. Is it your understanding that that is

J. Garvey
because some of them were also not traded?
MS. CARRERO: Object to the form of the question.
Q. Is it the same thing?
A. I don't know if it's the same thing or not and I don't have a complete understanding of that.
Q. Do you have an understanding whether there was know convertible debt included in these equity positions?
A. I do believe there were convertible -- there were some convertibles, yes, I have that understanding.
Q. Is it your understanding that for these equity positions many of them did not have bid/ask pricing information available as of either the closing date or the measurement date?
MS. CARRERO: Object to the form of the question.
A. I have an understanding that certain prices weren't available.
Q. Do you have any idea for how many of these equity positions that Barclays acquired there was no pricing information available as of

J. Garvey
the closing?
A. I have no complete -- I don't have a complete understanding of that.
Q. For those securities and the equity positions for which there was no bid/offer pricing information available as of the closing, what is your opinion as to how Barclays should have determined the bid/offer adjustment?
MS. CARRERO: Object to the form of the question.
A. I don't have an opinion on it. My opinion is what they did is wrong. That's my opinion.
Q. Do you have any opinion on what they should have done to make a bid/offer adjustment?
A. I don't have an opinion on what they should have done. My opinion is what they did was incorrect.
Q. And what they did -- let's make sure we agree on the facts of what they did. In paragraph 49, in footnote 57, am I correct that your understanding of what Barclays did is to take the securities for which there was bid/offer adjustment -- sorry, excuse me.

J. Garvey

Is it your understanding that what Barclays did is to look at the securities for which there was bid/ask information in both December and September and compare the difference between that bid/ask information?

MS. CARRERO: Object to the form of the question.

A. I think that's part of what they did.

Q. Maybe it's easier if you explain your understanding of what Barclays did.

A. I think they -- they took a look at, from what I understand and from recollection of the documents, is they took a look at bid/asks in September, bid/asks in December, applied some ratio of the differences between September and December, and then said that -- and then tried to calculate what the relative spread would be the September for all the differences in December, but they used sort of this average, which didn't make any sense because there were some securities in there that had some big differences. Had they used the median or something a little bit more relevant, they would have gotten a much smaller number. That's what

J. Garvey

I recall.

Q. Is it your testimony that they should have used the median rather than the average?

MS. CARRERO: Object to the form.

A. It's my testimony that using the average gets you a very -- a large bid/offer adjustment and it was not representative of the September bid/ask -- bid/offer spread, and had they used the median, they would have gotten a much smaller number.

Q. You're saying that the average leads to a larger adjustment -- well, let me strike that. Let me make sure I understand.

For the population of securities for which there is no bid/ask information, would you agree that those securities are, by definition, more illiquid than the securities for which there is bid/ask information?

A. I would agree that that's one indicia of illiquidity.

Q. Would you agree that securities which are illiquid are more likely to have a wide variation in bid/ask pricing as a general matter than securities which are widely and publicly

J. Garvey

traded?

MS. CARRERO: Object to the form of the question.

A. As a general matter, yes. It's getting a little bit far afoot of what my testimony's about, but what I know I would agree with that.

Q. So my question is, if you're trying to determine a bid/offer adjustment for the entire population of equity positions Barclays received, isn't the bid/ask information for the securities for which there actually is bid/ask information available the conservative measure when applied to illiquid securities for which there is no bid/ask information available?

MS. CARRERO: Object to the form of the question.

A. I didn't understand that question and I'm not sure it's relevant to what I've said here, but I -- basically, the way they did this calculation was not correct.

Q. But you don't have an opinion on how they should have made this bid/offer adjustment?

A. I think they should have used the

J. Garvey

median in the calculation that they used.

Q. Are you revising your earlier testimony that you do have an opinion on how they should do bid/offer adjustments for these equity positions?

MS. CARRERO: Objection.

A. No, that's a different opinion. You asked me if I had -- you asked me whether or not I would do something different. The answer is I don't think this is right, and if they used the median, it would have been more -- a more correct calculation.

Q. But your earlier opinion stands that you don't -- you're not giving an opinion in this case about how Barclays should have done bid/offer adjustments for these equity positions, generally?

A. As a general principle, no, that stands.

Q. And maybe just to make sure I understand what I was trying to get out of my question, if you have two -- a hypothetical again. This is complicated. I think the hypotheticals may help clarify it.

J. Garvey

If you have two equity positions that Barclays received, one is an S&P 500 stock, let's just say IBM, publicly traded, heavily traded every day, observable prices and bid/ask prices available.

A. Right.

Q. The second security is a totally illiquid convertible debt instrument that no one was trading and for which there is no bid/ask information available.

A. Okay.

Q. My question is, if Barclays looks at the IBM bid/ask spread in December and looks at its bid/ask spread in September and sees that it was much wider in September because of the volatility, isn't it fair for Barclays and accurate for Barclays to use that information and apply it to the convertible debt instrument to try to determine its bid/ask adjustment?

MS. CARRERO: Object to the form of the question.

A. As a hypothetical matter, that could be what you do. What they did I don't believe was correct because they used an average, a

J. Garvey

relative average, and they should have used the median because it was all -- there was a lot of information that is sort of the left tail of the distribution that drilled that number way up -- or right tail of the distribution.

Q. Have you calculated the amount by which using average rather than median impacted the valuation adjustment to bid price in these equity positions?

A. I did not. I believe Professor Zmijewski did, and I relied on what he did.

Q. Professor Zmijewski?

A. Zmijewski.

Q. Same person, different pronunciation.

A. Right. "Z Man" for short.

Q. Do you know the number?

A. No.

Q. But he does?

A. I hope so.

Q. Let's go over to the next page of your report where you address exchange-traded options portfolio. This is very complicated. Do you agree with that?

A. Yes.

J. Garvey

Q. Let me just ask you whether you know how much of a difference it would have made if Barclays did not use the ADP prices, as you explain in paragraph 51, but instead used the method you think they should have used.

MS. CARRERO: Object to the form of the question.

A. I don't know the relative difference there. I didn't make that calculation.

Q. Do you know whether anyone did?

A. I don't know if anyone made that calculation. I know that Professor Zmijewski made the second calculation using the same dates for the mid value and then the mid to bid value, and I think that difference is in his report and it's a couple hundred or $150 million. Then I made a calculation also of 861 by just using the same dates.

Q. Page 61?

A. No, 861 on page 18.

Q. Can you explain to me -- this is the point in your second bullet point on paragraph 51.

A. Right.

J. Garvey

Q. Can you explain to me what it is you're criticizing there?

A. Well, when they did their valuation adjustment, they used different dates. They used the end of date December -- September 22 for the bid/mid -- or, the mid value, I'm sorry, and then they used the 19th date for the bid/mid value, and then I said if you just used the same date, let's say the 22nd, you would get 861 versus a billion-40. So it's just inconsistent use of dates.

Q. Is this for all of the exchange-traded options?

A. I don't know the answer to that. What do you mean if this -- this date convention?

Q. Are the numbers in this bullet point capturing all exchange-traded options?

A. I don't know the answer to that. There were other exchange-traded options I believe that may have been calculated differently.

Q. When you say in your calculation the net valuation would have been 861 million rather than a billion-40?

J. Garvey
A. Okay.
Q. Are those negative valuations?
MS. CARRERO: Object to the form of the question.
A. What do you mean by "negative valuations"?
Q. Well, let me ask it this way: Are you saying that the Barclays method -- okay, you're saying the Barclays method led to a --
A. These are liabilities.
Q. That's --
A. They overstated liability.
Q. That's the question.
A. If that's what you're asking.
Q. So there was a negative number on the balance sheet is what I meant because it's a liability, and you're saying that the valuation method led to a liability of $1.04 billion instead of $861 million?
A. If you just use the same dates, yes.
Q. And what would the number be -- your 861 is the number if you use September 22, correct?
A. Correct.

J. Garvey
Q. What would it be if you used September 19?
A. I don't know.
Q. Does the information in this bullet not tell us?
A. No.
Q. Do you have the information that would tell you that?
A. I don't know the answer to that.
Q. Have you asked anyone to do that calculation?
A. Not that I recall.
Q. Is it your understanding these numbers, whether it's the 19th or the 22nd, are the values of the exchange-traded option positions themselves?
MS. CARRERO: Object to the form of the question.
A. As opposed to? I don't know the distinction you're making.
Q. I'm really not making a distinction. I just want to know are we talking about a population of exchange-traded options that are being valued here?

J. Garvey
A. We're talking about the short positions of these options, I believe, short side of the option portfolio.
Q. So again I just need to ask you a hypothetical. If the options that are being valued here are trading within some range for a period of days and then have an outlier day where they are vastly different, is it in that circumstance appropriate to look at an average over the days or to not use only the outlier valuation in trying to determine the value?
MS. CARRERO: Object to the form of the question.
A. I mean, that seems to be an incomplete hypothetical to me. It would depend on lots of facts and circumstances. I'm not sure what average you're talking about or number of days or what happened, but -- so it's just a little too incomplete to answer.
Q. You're saying they took the mid value from one day but the bid value from another day?
A. Yes.
Q. And you're saying the bid value on the 22nd was 352 million, whereas the bid value on

J. Garvey
September 22 (sic) was 531 million?
MS. CARRERO: Object to the form of the question.
A. I think that's correct, yes.
Q. Are the bid values from the open of business or the close of business?
A. I don't know the answer.
Q. Are the mid values from open of business or close of business?
A. I don't know the answer.
Q. You have a footnote to documents which we have, I assume, but do you rely upon any of the other experts in this case to perform the underlying valuation analysis assembly of the numbers here in this bullet point, second bullet point of paragraph 51?
MS. CARRERO: Objection to the form of the question.
A. I think the numbers would be in the document referenced. I believe Professor Zmijewski again may have something in his report about this.
Q. Are you relying on any other expert in giving the opinion you give in the second bullet

J. Garvey

point of paragraph 51?

A. No.

Q. Okay. Let's move on to the CMO portfolio, agency CMO portfolio.

A. Okay.

Q. Is it your understanding that bid/ask information was available for all of the securities within this portfolio?

MS. CARRERO: Object to the form of the question.

A. I don't have a complete understanding, but I think the answer is generally that they were not available for all of the securities in this portfolio.

Q. Do you know whether bid/ask information was unavailable for most of the securities in this agency CMO portfolio?

A. I don't know whether it was unavailable for most or not.

Q. Did you or your staff study what percentage of the overall portfolio did not have bid/ask information available?

A. My staff may have studied that and have an understanding of the percentage. I

J. Garvey

don't.

Q. Is it your understanding that Barclays took a sample of securities from the agency CMO portfolio?

A. Yes.

Q. And from that sample determined that there was a 10 percent bid/ask difference at the relevant time?

MS. CARRERO: Object to the form of the question.

A. My understanding is that they had two methods that they applied to get to this 10 percent, yes, that we talk about here at paragraphs 53 and 54.

Q. I just want to make sure, is the 10 percent that is arrived at for the sample as far as you know accurate for the sample?

MS. CARRERO: Object to the form of the question.

A. I didn't understand the question.

Q. I just want to know whether you -- I understand that you have a problem with them applying what they learned from the sample to all of the securities across the portfolio, at

J. Garvey

least I think I understand that.

A. Yes.

Q. Do you have a problem with the 10 percent that they arrive at for the sample itself?

A. Well, with respect to paragraph 54, where they calculated the 39 percent -- or, where they calculated the 39 CUSIPs, I think that was arithmetically correct what they did, if that's what you're asking.

Q. For those 39 CUSIPs there's an actual range of intraday trading bid/ask information, correct?

A. Correct.

Q. And some of it -- half of the sample had ranges from 15.9 percent to 23.9 percent, correct?

A. Correct.

Q. And the other half was much lower, down to .03 percent to 1.84 percent?

A. Correct.

Q. And do you understand how Barclays took that information and arrived at a 10 percent number?

J. Garvey

A. They did an average is what I recall.

Q. They did an average?

A. They calculated an average is what I recall.

Q. For the securities in the agency CMO portfolio for which there was no bid/ask information, wouldn't those securities be more likely to have a larger bid/ask spread than the securities for which there was bid/ask information available?

MS. CARRERO: Object to the form of the question.

A. I don't know the answer to that.

Q. If I ask you to assume that what I just said were true, that the securities for which there was no bid/ask information available would have -- be likely to have a larger bid/ask spread given their illiquidity than the securities for which there was bid/ask information available, wouldn't it be fair and appropriate and conservative --

MS. CARRERO: Object to the form.

Q. -- to apply the average bid/ask adjustment to all of those securities?

J. Garvey
MS. CARRERO: Object to the form of the question.
A. I relied on some of the work done by some of the valuation experts here on this, but I don't -- it depends on what average you're talking about, the top end average or the lower end average, and that's the problem. That some of the -- half of the average is only .03 percent to 1.48 percent. So you're averaging, you know, you're averaging numbers that are -- appear to be distinct, distinctly different populations.
Q. Let me ask you more simply then. What would you -- do you have an opinion on what should have been done to calculate an adjustment to bid prices for the securities in the agency CMO portfolio for which there was no bid/ask information available?
MS. CARRERO: Object to the form of the question.
A. I would have tried to get a larger sample of bid/ask spreads.
Q. A larger sample from where?
A. I believe that there were other CUSIPs

J. Garvey
available in that population and they just didn't look at the pricing.
Q. Do you have any basis for saying that if they had taken a larger sample it would have led to a lower bid/ask adjustment across the whole portfolio?
A. I don't know the answer to that question without looking at it.
Q. You and your staff haven't done that work, have you?
A. They may have done it with respect to some of the other work they did, not with respect to what I did.
Q. Do you plan to give any opinion in this case about whether -- about an alternative bid/ask adjustment or bid/offer -- bid/bid price adjustment for the CMO portfolio?
MS. CARRERO: Object to the form of the question.
A. I don't have a further opinion. I believe some of the other experts in this case may.
Q. Which ones?
A. I don't know. Some of the valuation

J. Garvey
guys.
Q. I just want to know whether you were planning to come forward with an opinion on what you believe more appropriate or accurate mid to bid adjustment would result in for Barclays agency CMO portfolio?
MS. CARRERO: Object to the form of the question.
A. As I sit here today, I have not been asked to do that and I don't believe I will do that.
Q. And you haven't studied nor analyzed the nature of the securities in the agency CMO portfolio for which there was no bid/ask information available, have you?
MS. CARRERO: Object to the form of the question.
A. I have not done a study that, no.
Q. You don't know how many of them were interest-only securities or other types of securities?
A. I looked at some summarizations where I saw IOs and other things in there, but I don't have a complete understanding.

J. Garvey
Q. Moving over to the next page of your report, you have a -- you quote Professor Pfleiderer in paragraph 55 and 56. Let's look at 55 first.
Can you read what you quote there and tell me if there's something in that quote that you're criticizing or whether you're just setting up background for what you go on to discuss.
MS. CARRERO: Object to form.
A. I think it was just the latter, as you have phrased it.
Q. And is the same true of paragraph 56?
A. Yes.
Q. In paragraph 64, the fourth line down, you have a statement that, "Such subjectivity in Barclays' choice of measurement dates introduces managerial bias." Do you see that?
A. Yes.
Q. Do you have an opinion, Mr. Garvey, as to whether or not there in fact was managerial bias on behalf of Barclays in its valuation of the securities acquired in the Lehman acquisition?

J. Garvey

A. My opinion stands as written. I believe if you look at some of the other experts' work and what they did, they -- and you look at the array of how things were valued, they would also conclude that it appears that there is certain managerial bias in coming to some of these valuations, but I didn't undertake to study that completely.

Q. Do you have an opinion, forgetting about the other experts, as to whether there was managerial bias?

A. My opinion stands as written, which is it introduces the concept. I haven't done a complete analysis to come to that conclusion, but it would appear from some of the valuations that there is -- there was a bias in some of the methodologies and dates chosen for valuing certain securities.

Q. And by a bias, is your opinion simply that the concept of using subjectivity and different methodologies allows for bias?

MS. CARRERO: Object to the form of the question.

Q. Or is your testimony an opinion that

J. Garvey

you've seen evidence, concretely, of bias?

MS. CARRERO: Object to the form of the question.

A. My opinion is it allows for bias, and if you look at the -- if you look at the valuations, it appears that they all go in the same direction, which is understating windfall.

Q. And then I have to go back to my initial question --

A. Okay.

Q. -- in this deposition. Is it your testimony in this case that Barclays has deliberately understated the value of the assets it received in this transaction in its publicly filed SEC reports?

A. My opinion stands as stated before.

Q. Does your testimony stand that you are not giving an opinion as to whether Barclays materially understated the value of the assets it acquired in the Lehman acquisition when it filed SEC Form 6-K in February 2009?

MS. CARRERO: Object to the form of the question and asked and answered.

A. Yes, my opinion is the same as before.

J. Garvey

Q. Is it the same as before that you are not giving an opinion in this case that Barclays materially understated the value of its assets on SEC Form 6-K filed in February 2009?

MS. CARRERO: Again, object to the form of the question and asked and answered.

A. I think my opinion at the time, and I'll try to restate or we could read it, was that I didn't undertake to study that and I don't have that opinion.

Q. Do you have an understanding of what materiality is in that context? You understand as an accountant what I mean by "materially"?

MS. CARRERO: Object to the form of the question.

A. I have a general understanding of the concept of materiality as an accountant and auditor, yes.

Q. Would you agree with me that if the assets are understated by 5 percent of their total value, that would be a material understatement on the Acquisition Balance Sheet?

MS. CARRERO: Object to the form of the question.

J. Garvey

A. As a hypothetical matter?

Q. Yes.

A. It's a matter of judgment whether it -- that would be viewed by someone as a material misstatement.

Q. I'm asking -- and you haven't made that judgment?

A. I haven't made -- that's my point -- I haven't made that judgment.

Q. You haven't made a judgment as to materiality?

A. I haven't made a judgment as to materiality nor the judgment of whether the financial statements in total were materially misstated.

Q. Have you made a judgment as to whether the specific aspect -- I didn't ask you about the financial statements in total. I have asked you, back on the first exhibit I showed you, about the assets acquired in the Lehman acquisition as reported on SEC Form 6-K that Barclays filed.

MS. CARRERO: Object to the form of the question.

J. Garvey

Q. Which is Exhibit 445 that I showed you at the beginning of the deposition.

MS. CARRERO: Same objection.

Q. My question is, you say you haven't studied materiality. I want to know whether it is your opinion in this case that Barclays materially understated the value of the assets acquired from Lehman in this SEC Form 6-K filed in February 2009?

MS. CARRERO: Objection to the form and asked and answered.

A. I'll answer it again, and my answer is I didn't make -- didn't undertake to make a determination of what materiality would be in the context of the question you asked me, nor did I undertake to understand whether or not this column in Form 6-S was materially understated.

Q. Did you undertake an analysis of whether or not the asset values listed on SEC Form 6-K that Barclays filed in February 2009 understated the value of the assets that Barclays acquired from Lehman?

MS. CARRERO: Objection to the form.

J. Garvey

MR. KAY: Objection, asked and answered.

Q. I asked it that time without the word "materially" if that's what you're relying on.

I'm asking you are you giving an opinion that Barclays filed Form 6-K with the SEC in a manner that understated the value of the assets it acquired from Lehman?

A. So let me understand it. So whether -- whether or not it's off by 1 dollar, is that what you're asking me?

Q. Do you know, do you have an opinion whether it's off, whether it's inaccurate, the SEC form that was filed by Barclays?

MS. CARRERO: Objection to the form of the question.

A. I did not undertake to have an opinion on the accuracy of this filing.

Q. Let's go back to page 21. You talk in paragraph 65 about the Giants Stadium Bonds?

A. Yes.

Q. And you're saying, as I understand it, that information from April and May 2009 showed that those bonds were worth more than the amount

J. Garvey

booked on the Acquisition Balance Sheet, correct?

A. Correct.

Q. Is it your opinion that information from April or May 2009 should have been used to determine the value of the Giants Stadium Bonds on the Acquisition Balance Sheet?

MS. CARRERO: Objection to form.

A. No.

Q. What is the relevance of your point in paragraph 65?

A. Well, the relevance is that if you get to choose dates subsequent to the measurement date, you can get sort of highly unusual answers and that the Giants auction rate securities are an example of securities that were valued at, if I recall right, like 10, 10 and 44 in the opening balance sheet, but by April -- actually, by December, they were valued at par and the value of those securities went up approximately $350 million in that time period.

Q. Do you recognize any difference between using information from the day immediately after the closing for an illiquid

J. Garvey

security and using information from six months later?

MS. CARRERO: Object to the form of the question.

A. There's a difference as to time.

Q. Is it relevant to whether or not that subsequent post-closing information should be used as an indicia of the value as of the date of closing?

A. It's only an example of what happens when you don't value things or what could happen when you don't value things as of the date of the acquisition or the measurement date.

Q. You're not giving testimony, are you, that a sale price to an outside party after the closing date can never, under any circumstances, be relevant to determine the value that should be booked on the Acquisition Balance Sheet?

MS. CARRERO: Objection to the form of the question.

A. I believe we spent a lot of time on that and my answers are the same, which is it could be relevant, yes.

(Recess; Time Noted: 11:50 A.M.)

J. Garvey
(Time Noted: 11:59 A.M.)
BY MR. HUME:
Q. Mr. Garvey, back on the record, can you tell me what -- you have a section of your report that discusses Professor Pfleiderer's discussion of PwC.
A. Okay.
MS. CARRERO: Objection.
Q. Can you just tell me first, putting aside your assessment of Professor Pfleiderer's report and testimony, can you tell me what PwC information you have reviewed and analyzed?
A. It's in my report. I can't tell you without looking, you know, reciting what's in there.
Q. Have you reviewed the documents that PwC itself produced?
A. My understanding is PwC produced a lot of stuff, so when you say have I reviewed the documents, I have reviewed, most likely, some of those documents. And I can tell you what I reviewed if you look at the Documents Relied On. We could go through those and then I could tell you specifically, but I'm not sure I reviewed

J. Garvey
all the documents, but I reviewed some of the documents.
Q. If there was a PwC document you reviewed, it would be in the list of things you reviewed and relied on in your report?
MS. CARRERO: Object to the form of the question.
A. As a general matter, yes.
Q. Have you reviewed any PwC information since filing your report that hasn't been listed in the report? That's the question.
MS. CARRERO: Object to the form of the question.
A. I think there may have been subsequent productions of PwC documents that I may have looked at, yes, that aren't in here.
Q. I would ask that anything you have looked at from PwC that isn't listed in your report be identified and produced to us.
MS. CARRERO: We'll get you a list of that.
Q. Has anything that you have reviewed from PwC since filing your report caused you to change or modify or refine any of the opinions

J. Garvey
in the report?
A. I don't believe so.
Q. What is your understanding of the nature of PwC's auditing of the Barclays Acquisition Balance Sheet?
MS. CARRERO: Object to the form of the question.
A. I'm not sure I understand your question.
Q. How would you describe it? What's your -- do you have an opinion, a professional opinion, one way or the other, as to PwC's auditing of Barclays' Acquisition Balance Sheet?
MS. CARRERO: Object to the form of the question.
A. I don't have an opinion on PwC's auditing, generally. My opinions are in this section that you just referenced to my report as relates to Professor Pfleiderer's reliance on PwC and PwC.
Q. So, again, for the moment, putting aside Professor Pfleiderer, what I want to know is, you have a number of criticisms of what Barclays did in its valuation of assets on the

J. Garvey
Acquisition Balance Sheet. Do you think PwC failed to identify those criticisms or those errors in its audit of Barclays and its Acquisition Balance Sheet?
MS. CARRERO: Objection to the form of the question.
A. I don't know, there's a lot of them, and I don't know on case-by-case basis whether or not they identified each one and then whether or not, upon identifying them, what they said about them.
Q. Do you think PwC should have identified and recognized what you consider to have been valuation methodology errors underlying the Acquisition Balance Sheet?
MS. CARRERO: Objection to the form of the question.
A. Do I think they should have?
Q. Yes.
A. I think that they could have and identified those --
Q. If they --
I'm sorry. Go ahead.
A. I think some of those things they did

J. Garvey

identify because I did review. They identified the subsequent dating issues. They identified the valuation -- the December 22nd valuation date. I'm aware that they identified those issues.

Q. So for the issues they did identify, why is it that PwC ultimately accepted the Barclays methodology?

A. I don't know.

Q. Do you believe that PwC made a mistake in accepting the Barclays methodology?

A. I don't know if they did or they didn't. I don't have enough information to understand what they understood and how they made their judgments. So I don't know the answer to that.

Q. What information would you need in order to make that judgment?

A. Everything they considered with respect to each judgment.

Q. Which would be all of the documents that PwC had generated or reviewed in their audit of the Acquisition Balance Sheet, correct?

MS. CARRERO: Object to the form of

J. Garvey

the question.

A. All the information that they generated, all the conversations, the memorialization of those conversations, everything they did.

Q. Do you feel you haven't had access to that?

A. Access to what?

Q. All that information.

A. I had access to some of the work papers. It's not clear whether I had access to all their work papers. Clearly didn't have access to everything they did, based on my review.

Q. With respect to the issues you identified in the Barclays valuation methodologies that you are not sure whether PwC identified them or not, do you believe PwC should have identified them?

MS. CARRERO: Objection to the form of the question.

A. Should have identified them? I'm not sure by issue whether they should have or should not have, I just don't know.

J. Garvey

Q. You don't have an opinion one way or the other?

A. With respect to whether they should have identified every inconsistency that I mentioned? I'm not sure.

Q. In other words, are they important enough that PwC should have identified them?

MS. CARRERO: Objection to the form of the question.

A. Some were important and were identified. Some may not have been important. I didn't make that determination.

Q. Do you have any understanding of what Professor Pfleiderer did to learn about what PwC did in its audit?

A. My only understanding is what he said in his deposition and in his report. He said in his report, if I recall, "I relied on their extensive procedures." He didn't elaborate. And in his deposition I think he said -- he gave testimony regarding what he did, and I can't recall without reading it, but ...

Q. Do you have any understanding of whether Professor Pfleiderer spoke with any

J. Garvey

Barclays employees about the PwC audit?

MS. CARRERO: Objection to the form of the question.

A. I don't have an understanding about that. He may have testified to that, but I don't recall if he did or he didn't.

Q. Do you know whether Professor Pfleiderer and his staff reviewed all the documents produced by PwC?

MS. CARRERO: Objection to form.

A. I don't know the answer to that. I believe that the documents that Professor Pfleiderer testified that he reviewed with respect to price testing are the ones we talk about in this report, and they were very limited at the time. That's the point.

Q. Do you know whether more documents have been produced since that time by PwC?

A. I believe there have been, yes.

Q. And do those documents show a more extensive investigation and analysis of Barclays valuation methodologies than the initial set of documents showed?

MS. CARRERO: Objection to the form.

J. Garvey
A. As a general matter, yes.
Q. And do those documents, therefore, cause you to change your view that Barclays -- excuse me, that PwC did not conduct an extensive negotiation -- investigation?
MS. CARRERO: Objection to form.
A. I never had that opinion.
Q. You're not giving an opinion in this case as to whether PwC conducted an extensive investigation into the Barclays valuation methodologies?
A. My opinions are as stated in my report, and I believe if you want to go through those, we can, but ...
Q. Yes, I want to know whether -- it's not clear to me from your report if you're giving an independent opinion on what PwC did or simply giving an opinion on what -- whether Professor Pfleiderer had a basis as of the time of his report to conclude that PwC did in fact perform an extensive investigation.
MS. CARRERO: Objection to the form.
A. My opinions are as stated and I'm happy to go through those. I'm not sure what

J. Garvey
you're trying to get me to say, but ...
Q. In paragraph 83 of your report --
A. Right.
Q. -- you say, "Based on my review of the PwC procedures performed on Barclays exit price marks (as documented in the February 12, 2010 PwC production), PwC most likely did not perform an extensive investigation and testing in light of the following deficiencies in the valuations included in the Barclays' Acquisition Balance Sheet." You see that sentence?
A. Yes.
Q. And you stand by that?
A. Yes.
Q. Has the production from PwC subsequent to February 12, 2010 in any way caused you to modify your conclusion that PwC most likely did not perform an extensive investigation and testing?
MS. CARRERO: Objection to the form.
A. In light of these following deficiencies and the deficiencies as outlined here still stand.
Q. And so the following deficiencies that

J. Garvey
you set forth in paragraph 83 are deficiencies that you believe PwC should have identified but failed to; is that correct?
A. These are deficiencies that were not identified by PwC.
Q. And do you believe that PwC should have identified them?
A. As a general matter, yes.
Q. And why do you think PwC failed to identify them?
MS. CARRERO: Objection to the form.
A. Well, because they -- I saw no evidence of them identifying them and correcting for them or concluding as to them.
Q. But my question is do you believe PwC failed to identify them because they did not conduct an extensive investigation?
MS. CARRERO: Objection to form.
A. I don't -- I don't know if they failed to identify them -- I don't know the reason that they failed to identify them, but they, as listed, are here.
Q. Is it possible in your mind and in your opinion that PwC failed to identify them

J. Garvey
because they didn't agree with your assessment that they were deficiencies?
MS. CARRERO: Objection to the form.
A. I don't know if they agreed or, you know, I don't know if they would agree or disagree with my --
Q. Putting aside the deficiencies, your assertion of deficiencies, based on the production from PwC after February 12, 2010, do you believe that PwC did in fact perform an extensive investigation of the Barclays' Acquisition Balance Sheet?
MS. CARRERO: Objection to form and I believe this is asked and answered.
A. Yes, I believe that, in light of these deficiencies, it is hard to -- it would be hard for Mr. Pfleiderer's -- or, hard to understand Mr. Pfleiderer's assertion that there was an extensive investigation.
Q. I'm not talking about Mr. Pfleiderer now. I'm talking about PwC.
A. Right.
Q. And you say you don't know why they didn't identify these deficiencies.

J. Garvey
A. Right.
MS. CARRERO: Objection to form.
Q. And so I'm saying, putting the deficiencies aside, based on their production, including their production after February 12, 2010, do you believe they conducted an extensive investigation?
MS. CARRERO: Objection to form and asked and answered.
A. I don't believe, based on these deficiencies, that they conducted an extensive investigation.
Q. So is it your testimony that they failed to conduct a proper audit of the Acquisition Balance Sheet?
A. That is not my testimony.
Q. Is it your testimony that they failed to conduct an audit of the kind that you believe they should have conducted?
MS. CARRERO: Objection to form.
A. I didn't make that determination.
Q. Let me ask you about the series of bullet points in paragraph 82.
A. 82?

J. Garvey
Q. You're saying these are the things that they should have done if they were to have conducted an extensive investigation, correct?
A. I'm saying --
MS. CARRERO: Object to form.
A. -- an extensive investigation would have included some of these -- or these things. It may have included other things.
Q. And what is the basis for that testimony?
A. My understanding of the rules for auditing securities. I think I included those in Auditing Fair Value Measurements and Disclosures.
Q. So your understanding of the rules is that the rules would require the things that you outline in the bullet points in paragraph 82 of your report?
A. As a general matter, yes. Well, yes, I'm sorry, they may not all be listed in the appendix, but as a general principle, yes.
Q. What rules, because I don't see any rules cited here, what rules require these bullet points?

J. Garvey
MS. CARRERO: Objection to the form of the question.
A. Well, there are rules for auditing fair value measurements, and we summarize some of those in Appendix IV -- I'm sorry, Appendix VI of my report.
Q. And those rules in that appendix require the things that you outline in paragraph 82?
A. Those rules are highlights. The rules in general require the things I outlined in paragraph 82. I'm being careful here because I'm not sure every bullet point here is in the rules that we summarized.
Q. Okay. But the bullet point summarized your understanding in general of the types of things the rules require?
MS. CARRERO: Object to the form.
A. At a very general -- at a high general level, yes.
Q. And do they also summarize the types of things that you believe PwC failed to do?
MS. CARRERO: Objection to the form of the question.

J. Garvey
A. I did not necessarily make that determination, that they failed to do all this.
Q. You say you did not necessarily make that determination. Did you make that determination?
A. I think with respect to certain securities they may have failed certain of these requirements, yes. I can't make a sweeping "all" comment is my point.
Q. They failed to do some of them, at least, in your opinion; is that correct?
A. Yes. Yes.
Q. Does that mean PwC failed to comply with the auditing rules you reference in your appendix in its auditing of the Barclays' Acquisition Balance Sheet?
MS. CARRERO: Objection to the form of the question.
A. I have not undertaken to make that determination. That's not my opinion.
Q. Let's go through the bullet points.
A. Okay.
Q. The first one is, "Examination of evidence regarding the existence of a right on

J. Garvey
an asset."
A. Right.
Q. What do you mean by that?
A. Understanding the existence and the rights related to the securities, the cash flow rights, you know, the rights in the structure.
Q. In order to do that, do you need to have the original documentation of the security in question?
A. As a general matter, yes.
Q. What if you don't have access to that documentation?
A. Then you haven't done it.
Q. What are you supposed to do if you can't get access to that information?
A. Depends on, you know, lots of facts and circumstances.
Q. I don't mean -- I'm not just talking about PwC. What if Barclays doesn't have that information?
MS. CARRERO: Object to the form of the question.
A. As a hypothetical matter?
Q. Yes.

J. Garvey
A. They should get it.
Q. Is it your understanding they had access to all the accurate information for all the securities that they acquired?
MS. CARRERO: Objection to the form of the question.
A. I don't have that. I don't know.
Q. Your second bullet point refers to an "inspection of the facility, such as the Giants Stadium or architectural drawings, building site thereto," do you see that?
A. Yes.
Q. Is it your testimony that in order to value the Giants Stadium Bonds properly, you need to do a physical inspection of Giants Stadium?
A. It's my testimony that the audit requirements rules would ask you to do that in certain circumstances, yes.
Q. Well, what about in these circumstances?
A. With respect to Giants Stadium?
Q. Yes.
A. Yes, I've used it as an example. I

J. Garvey
think the rules say that you're supposed to inspect the facility when you have a structure like that or the, you know, you're supposed to gain an understanding of the structure.
Q. So is it your testimony that both the Barclays valuation personnel and the PwC auditors should have done a physical inspection of Giants Stadium in order to properly value the Giants Stadium Bonds under these circumstances?
MS. CARRERO: Objection to the form of the question.
A. Not necessarily. It's just an example.
Q. Well, is it an example that applies? Is it an example of something they should have done?
A. GAAS would tell you that in certain circumstances you're supposed to -- GAAS being Generally Accepted Auditing Standards -- examine the facilities.
Q. Right. And I'm saying, under these circumstances, should they have done it?
A. Which circumstances?
Q. The circumstances of this transaction

J. Garvey
and the attempt to value all the assets acquired from Lehman Brothers in this transaction, should Barclays and PwC have physically inspected Giants Stadium?
MS. CARRERO: Objection to form.
A. With respect to Giants Stadium, I just used that as an example. Not necessarily.
Q. Okay. It's an example that may not apply?
A. Yes.
Q. Are there any examples you can think of that do apply where they failed to do a physical inspection?
A. I saw no indication that there were any physical inspections done --
Q. Well, are there --
A. -- visiting the problem.
Q. -- any examples where you think there should have been a physical inspection and there wasn't one?
A. I don't have any specific examples. The point here is if you're doing an extensive examination, one of the things that GAAS requires is to visit the facilities. I saw no

J. Garvey
indications that any of that was done.
Q. Okay. When I asked you of a specific example, you can't give me one. I want to know -- do you think they should have flown out to look at every physical facility of every physical plant, building, real estate that collateralized every single security in the tens of billions of dollars of structured financial products that they received in this transaction?
MS. CARRERO: Objection to the form of the question.
A. That's not my testimony.
Q. I would assume not.
Is there any physical place or structure or real estate that you believe was so important that both Barclays and PwC should have conducted a physical inspection if they were to comply with GAAS?
MS. CARRERO: Objection to the form of the question.
A. My opinion is that GAAS requires you to do this. I saw no evidence of this being done for any facility.
Q. And you think that's a deficiency in

J. Garvey
both the Barclays valuations and the PwC audit; is that correct?
MS. CARRERO: Objection to the form of the question.
A. That wasn't my opinion. My opinion is as stands, which is, as a general principle, an extensive audit would have indicators of these particular steps that I listed.
Q. Well, it's either a deficiency or it isn't. So are you saying the failure to conduct a physical inspection of physical facilities was a deficiency in the PwC audit?
MS. CARRERO: Objection to the form of the question.
A. I didn't use the word "deficiency" in this opinion. What I said was an extensive investigation would have included the following things. It didn't include -- I saw no evidence that this was done.
Q. Your next bullet is, "Documentation of the reasonableness of management assumptions and models used for deriving Barclays' measures of fair value and independent assessments of the fair values Barclays derived."

J. Garvey
Can you explain what that means?
A. It means what it says. I'm not sure I understand your question.
Q. Well, an independent assessment of the fair values, are you saying that PwC should have independently valued every security that Barclays acquired?
MS. CARRERO: Objection to the form of the question.
A. That's not what this says, no.
Q. What does it say? They should do a sample?
MS. CARRERO: Objection to form.
A. There should be documentation of the reasonableness of management assumptions and models used deriving the measures of fair value and independent assessments of the value.
Q. Do you know whether PwC did any of that?
A. I believe they did some of it.
Q. Did they do enough, in your view?
A. I think with respect to some of the securities that we list later it doesn't appear that they did enough.

J. Garvey
Q. And can you give me an example of where they failed to do that?
A. I think the Pine CLO is an example.
Q. Any other example?
A. Not that as I sit here today.
Q. The next bullet point talks about a selection and testing of a sample from the 11,000 securities Barclays acquired. Do you know whether PwC did any such sampling?
A. I believe they did some sampling.
Q. Do you believe they did a sufficient sampling?
MS. CARRERO: Objection to form.
A. I believe that they did some sampling. I think there are areas where there were no samples done if you look at the work paper.
Q. Do you think that GAAS required them to do more sampling than they did?
A. I haven't made that determination.
Q. And just generally, have you made a determination that GAAS required PwC to do anything that they failed to do?
MS. CARRERO: Objection to form.
A. I have not -- I do not have any

J. Garvey
opinion with respect to anything that PwC failed to do in this report.
Q. The next bullet point says -- when you say "in this report," you mean in your opinion in this case --
A. Yes.
Q. -- correct?
The next bullet point says, "Analysis of the contractual documents for each security," do you know whether PwC did any of that?
A. They may have done some.
Q. Have you reviewed what they did?
A. Some of what they did, yes.
Q. Did you see any flaws in what they did?
MS. CARRERO: Objection to form.
A. With respect to this bullet point?
Q. Yes.
A. I think, again, with respect to the Pine CLO they didn't understand the structure and the tranches and the cash flow distributions.
Q. Anything other than Pine? Any other examples?

J. Garvey
A. I think there were other examples, but I can't recall what they are as I sit here today.
Q. Next bullet point, "Construction of cash flow scenarios and alternative scenarios."
Do you know whether PwC did that?
A. I think they did some of that, not much. I think most of it was done by the client and they may have -- there may have been some testing done of these, of these things, of the inputs.
Q. Does GAAS permit the auditor, the independent auditor, to review the client's cash flow scenarios rather than do it -- or does it require that it be done independently?
MS. CARRERO: Objection to the form of the question.
A. GAAS doesn't require that you do it independently.
Q. Let's go over quickly to page 28.
A. Okay.
Q. Are you, Mr. Garvey, are you giving an independent expert opinion on the value of the Pine security?

J. Garvey
A. No, I am relying on the other experts.
Q. How many other experts do you rely on in your report? Is it just Mr. Slattery or are there others?
A. I believe I have relied on some of the work that Mr. Slattery has done, some of the work that Professor Zmijewski has done, some of the work that the other experts, Mr. Olvany and Mr. Schwaba have done.
Q. And how did you rely on that work when you constructed your report?
A. I'm not sure I understand your question.
Q. Well, they served their reports on the same day you served your report.
A. Okay.
MS. CARRERO: Objection to the form.
Q. So how did you get access to their work before they filed their report?
MS. CARRERO: Objection to the form of the question.
A. They work at the same firm.
Q. They work at Navigant?
A. Yes.

J. Garvey
Q. Did they give you their draft reports to review?
A. We had access to draft reports, and some of the people working with me also worked with them.
Q. Did you review any of their draft reports?
A. Did I personally? I reviewed some draft information of some of the experts, primarily Mr. Zmijewski and Slattery, and people under my supervision did for sure.
Q. Did you review draft reports for Schwaba?
A. I don't recall reviewing a draft report necessarily for Schwaba, although somebody under my supervision may have.
Q. But you reviewed draft reports of Slattery and Zmijewski?
A. I think I may have seen portions of their draft reports, yes.
Q. Any others that you can recall?
A. I believe those are the ones that I may have reviewed in draft, although people under my supervision I think may have reviewed

J. Garvey
other people.
Q. In the bullet point on the top of page 29 you refer to Barclays applying a 5 percent liquidity discount to the notes that were maturing within days of the acquisition. You see that?
A. Yes.
Q. And you say that resulted in a very large implied yield?
A. Yes.
Q. Are you aware of whether or not that 5 percent liquidity discount ever resulted -- strike that. Are you aware of any situations within the same portfolio of notes in which the 5 percent liquidity discount was insufficient because the notes ended up not maturing or defaulting subsequent to the closing?
MS. CARRERO: Objection to the form of the question.
A. I don't have any awareness of that.
Q. You understand that the portfolio of notes to which the 5 percent discount was applied included some that were maturing very soon after closing and many that were maturing

J. Garvey
long after the closing; is that correct?
MS. CARRERO: Objection to the form of the question.
A. I understand that there were different maturity dates, yes.
Q. And is it your understanding that some of those notes carried a risk that they would default before they matured?
A. As a general matter, I understand that principle, yes.
Q. And so isn't it true that in some cases the 5 percent liquidity discount will be insufficient to reflect the actual yield that would be realized on a security that defaults instead of maturing after the closing?
MS. CARRERO: Objection to the form of the question.
A. I don't have any understanding of that.
Q. You don't have any understanding of that?
A. Not as you --
Q. Let me just ask you: Have you studied whether or not the notes within this portfolio

J. Garvey
have defaulted, whether any of them have defaulted?
A. I have not studied that.
Q. Have you studied whether the 5 percent liquidity discount on average over the whole population of notes proved to be inaccurate adjustment to bid pricing for the entire portfolio as opposed to just a few select assets?
MS. CARRERO: Objection to the form of the question.
A. I have not studied that issue with respect to this bullet point and these assets.
Q. The next bullet point talks about the concept of practical control and substantive ability to transact. Do you believe those concepts are irrelevant to the valuation of the assets Barclays believed it was entitled to receive in the Lehman Brothers acquisition?
MS. CARRERO: Objection to the form of the question.
A. I don't -- I have never -- I don't believe those concepts exist in the rules and I don't know what they mean.

J. Garvey
Q. Do you therefore think they are irrelevant to the valuation of the assets Barclays received in the transaction?
A. I don't know whether they're relevant or not. I know that they don't exist in the rules that drive accounting for fair value accounting in the context of a business purchase acquisition.
Q. Can you tell me what the TRACE database is?
A. That is a I think a third-party database used to price actively traded securities, and I can't tell which securities. I think bonds. That's my understanding of trace.
Q. What is your criticism in this last bullet point on page 29?
MS. CARRERO: Objection to the form of the question.
A. The criticism, to summarize -- I mean, it speaks for itself -- is that they had values in the TRACE system, but they used this proxy, the Lehman CDS as a proxy when they had the values in the system.

J. Garvey

Q. In the bullet point on the top of page 30 you refer to the fact that Barclays sometimes used BoNY, Bloomberg, or other sources for estimation of fair value, do you see that?

A. Yes.

Q. You say that is inconsistent in applying that to some assets, but not others; is that right?

MS. CARRERO: Objection to the form of the question.

A. I think as a general principle this issue goes to there were inconsistencies with respect to their pricing procedure, yes.

Q. Doesn't that inconsistency simply reflect the fact that some assets had observable prices such that BoNY or Bloomberg or another source for those observable prices is reliable, whereas other assets were not traded at all and therefore the BoNY mark would not be reliable?

MS. CARRERO: Objection to the form of the question.

A. I don't know -- I think their policy was to use these services. In certain circumstances, these services had values and

J. Garvey

they didn't use them. That's the point.

Q. Under what circumstances, when you say "these services," under what circumstances did Barclays not use these services when they were available?

A. The ones we write about right in this bullet point.

Q. Do you have an independent opinion as to whether for the circumstances in which these services had prices for certain CUSIPs, whether those prices were reliable?

MS. CARRERO: Objection to the form of the question.

A. I don't know if they're reliable or not.

Q. Have you studied the values of the CUSIPS referenced in this first bullet point on the top of page 30 of your report?

A. Studied the values?

Q. Do you have an independent judgment as to the fair values of the assets discussed in the first bullet point on the top of page 30?

A. I did not attempt to value them independently.

J. Garvey

Q. Did you attempt to value independently any of the assets Barclays acquired from Lehman in this case?

A. No. Me personally, no.

Q. You or your staff?

MS. CARRERO: Objection to the form and asked and answered.

Q. Are you giving any opinion in this case about the values of any of the assets Barclays acquired from Lehman?

MS. CARRERO: Same objection and asked and answered.

A. My opinion is not about the values.

Q. You're not giving a valuation opinion is all I'm asking?

A. Correct.

MR. HUME: Let's take a quick break so I can try to finish up.

(Recess; Time Noted: 12:34 P.M.)

(Time Noted: 12:50 P.M.)

BY MR. HUME:

Q. Mr. Garvey, I have handed you what has been previously marked as Deposition Exhibit 343A. It is a transcript from a Barclays Bank

J. Garvey

announcement from September 17, 2008. Do you see that?

A. Yes.

Q. Have you seen this document before?

A. Yes.

Q. Are you familiar with its contents, generally?

A. I think it's an analyst call.

Q. That's right.

A. Yes.

Q. And in the call on page 2 of this document in the fifth paragraph, there is a statement by Barclays that, "We also mentioned in our announcement today that certain of our shareholders have expressed support for the transaction and an interest increasing their shareholdings in Barclays." It goes on to say, "In fact, the transaction is capital ratio accretive without additional equity issuance. And the source of that accretion is the negative goodwill from the transaction, which amounts to about 2 billion U.S. dollars post tax."

Do you see that?

A. Yes.

J. Garvey

Q. And do you understand that to mean that Barclays was announcing before the deal was approved that it expected to have an acquisition gain of about $2 billion post tax?

MS. CARRERO: Objection to the form of the question.

A. I have no understanding other than what this says, and I think it speaks for itself.

Q. Well, as an accountant, would you have understood the negative goodwill as an acquisition gain?

MS. CARRERO: Object to the form of the question.

A. As an accountant, I understand that negative goodwill would mean gain, yes, generally speaking.

Q. And can I ask you to turn to page 5 of the document, where there's a question and answer between an analyst from Citigroup and the Barclays executives.

A. Okay.

Q. Question at the top from the Citigroup analyst, he says -- he has a couple of questions

J. Garvey

and says, "One just following up on your comments on the capital and the 15 billion" --

Maybe we need to just show you what he says what the 15 billion is, which I believe refers to what they thought their risk-weighted assets were.

MS. CARRERO: Objection to form. I don't think there's a question here.

MR. HUME: There is not a question right now.

Q. Okay. It's in the answer. The question is -- he asks is: "Am I right, I have just done this very quickly, but you would need to increase equity by about a billion dollars, given the extra 15. You have a buffer between the trading assets and liabilities of four. And you are indicating you're accretive, even without the new equity being raised. Are you assuming, though, that the 4 billion buffer is likely to come down? Because I guess it could come down from four all the way to one and still be accretive for capital at the end of the day. Or is that very much, this mark to market as of last night, all the toxic stuff is outside of

J. Garvey

this portfolio. We are expecting if anything maybe to run profits from these positions?"

The answer from John Varley is, "The 'or is it' piece of your analysis, Tom, is the right way of looking at it. So we absolutely expect to preserve that buffer and in the way that Chris has described we have marked, and the capital derived from the negative goodwill that arises from the transaction is actually more than is needed to support the 15 billion dollars of risk-weighted assets. It is just the combination of that part of the transaction gives them an enhancement to the Tier 1 capital and equity Tier 1."

Do you see all that?

A. Yes.

Q. Do you understand what risk-weighted assets are?

MS. CARRERO: Objection to the form of the question.

A. I don't really have a complete understanding of what they're talking about here.

Q. My question is do you understand what

J. Garvey

risk-weighted assets are as a general conceptual point?

MS. CARRERO: Object to the form of the question.

A. I don't really know what risk-weighted assets means in that context, no.

Q. Do you understand what Tier 1 capital is?

A. No.

Q. Or equity Tier 1?

A. No.

Q. Do you understand that banks have regulatory capital requirements?

A. I do understand that as a general principle, yes.

Q. Do you understand that banks have regulatory capital requirements that vary depending on the nature of the assets they have and how risky those assets are?

MS. CARRERO: Objection to the form of the question.

A. I don't have -- I have a general understanding but not a complete understanding of that.

J. Garvey

Q. Would the information in this investor teleconference transcript indicate to you that Barclays was expecting $2 billion of gain from regulatory capital or from intangibles?

MS. CARRERO: Objection to the form of the question.

A. I have no idea.

Q. Let me go back to the last part of your report where you talk about negative goodwill, and let me ask you, would you agree that negative goodwill is an accounting term that arises in distressed transactions where the acquirer takes on assets in excess of liabilities?

MS. CARRERO: Objection to the form of the question.

A. I think -- I'm not sure about distressed. Negative goodwill is defined in the literature and it's generally driven by the fair value of net assets and net liabilities versus the consideration paid, yes.

Q. Is it most commonly seen in distressed transactions?

A. I don't know what you mean by

J. Garvey

"distressed transactions."

Q. Transactions that occur because the seller is either insolvent or about to be insolvent or in a financially distressed state.

MS. CARRERO: Objection to the form.

A. I don't know the answer. I haven't studied that.

Q. You have in paragraph 89, you state that, "Excluding the real property, Barclays acquired additional assets of approximately $2.08 billion comprised primarily of intangibles, furniture, and other assets."

Do you know how that $2.08 billion number was calculated?

MS. CARRERO: Objection to the form of the question.

A. Do I know how it was calculated? I don't know the components of it, no.

Q. You cite to Exhibit 377A. If I show you that, will you be able to figure it out?

MS. CARRERO: Objection to the form of the question.

A. I have to look at it.

Q. Here's a copy of Deposition Exhibit

J. Garvey

377A. I believe the page that shows the backup is the third page. Let me just see if I can work this out with you.

If you go to the third page of Exhibit 377A.

A. Okay.

Q. It has fixtures, fittings and software of .53, do you see that?

A. Not yet.

Q. Line 36.

A. I do see that.

Q. That's 530 million. And on line 34 it has intangibles -- intangible assets, operating leases of 1.45 billion, do you see that?

A. Yes.

Q. Those two add up to 1.98.

MS. CARRERO: Objection to the form of the question.

MR. HUME: That wasn't a question. That was just math.

Q. Do you agree that that lines up -- those two added up to 1.98?

A. 1.98, I would agree.

Q. Do you know how you get from that to

J. Garvey

2.08?

A. No.

Q. Do you think it could be including the prepayment obligations of 70 million?

MS. CARRERO: Objection to the form of the question.

A. It could. I'm not sure.

Q. Okay. If you are able to determine the answer to that, I would just like to state for the record that we would like to know the answer. You can just let us know through counsel.

A. Okay.

MS. CARRERO: Okay.

Q. You have at the end of your report a big number of 13 billion that you say, as demonstrated in Professor Zmijewski's report, that Barclays' negative goodwill was at least 13 billion, do you see that?

A. I see that, but that's not exactly what it says.

Q. What does it say?

A. It says, "In any event, and as demonstrated in Professor Zmijewski's report,

J. Garvey
Barclays' negative goodwill on the transaction as consummated was far greater -- Barclays' windfall was at least $13.051 billion."
Q. Is that your opinion or Professor Zmijewski's opinion?
A. That's Professor Zmijewski's opinion, and he has a schedule in there that shows you, in his report, I'm sorry, that shows you how you get to that number, but --
Q. All I'm trying to establish is that you're not the expert who's going to be explaining and testifying to the court why it is that the movants believe the total windfall was at least 13 billion, that's going to be Professor Zmijewski, correct?
MS. CARRERO: Objection to the form of the question.
A. That would be Professor Zmijewski, yes.
Q. Not you?
A. Not me.
Q. That's good, because otherwise we would have to keep going.
You're not giving an opinion one way

J. Garvey
or the other, are you, Mr. Garvey, as to whether it was appropriate or inappropriate for Barclays to record negative goodwill in this transaction?
MS. CARRERO: Objection to the form of the question.
A. I don't have that opinion, no.
Q. And you don't have any opinion about the extent to which Barclays' negative goodwill does or does not correspond with the amount of increased regulatory capital that Barclays was able to record?
MS. CARRERO: Objection to the form of the question.
A. I didn't study that, how they interact.
Q. Mr. Garvey, have you ever been the partner responsible for signing the audit of a major financial institution?
MS. CARRERO: Objection to the form of the question.
A. I was an auditor. I signed many audit opinions. I'm not sure I would say that I signed an opinion of a major financial institution, although I don't know what you mean

J. Garvey
by "major financial institution."
Q. Did you ever sign the audit of any institution?
A. I signed audit opinions when I was an audit partner at Deloitte & Touche, yes.
Q. Including for publicly traded institutions?
A. Yes.
Q. Can you name any publicly traded institutions for which you signed the audit at any point in your career?
A. I don't recall, but I signed audit opinions for SEC registrants, I recall. I was an audit partner for four years.
Q. So there's a typo in your resumé that says you were a partner at Deloitte from 1980 to '94. Should it be 1990?
A. No, '08 to '94, but I was there for 14 years, but I didn't become an audit partner until 1990 and you can't sign opinions until you're an audit partner. I was there 14 years. I started out as a new guy, then a not so new guy, more --
Q. The resumé, I'm sure this is

J. Garvey
accidental, but on page 36 of your resumé it says you were a partner from 1980 to June '94?
MS. CARRERO: Objection to form.
A. I'm not sure that's -- ultimately, when I left I was a partner, and I was there from 1980 --
Where is it? I'm sorry. What page, thirty --
Q. Six.
A. Yes, I mean, I was -- I was a partner when I left, but I was not a partner for that entire period. I was a partner for four years. I mean, that's -- 1980 to '94 refers to the entire time I was at Deloitte & Touche.
Q. Okay.
A. Similar, you know, similar to all the other places.
Q. When you're the partner who signs the audit, does that mean you're also the engagement partner with overall responsibility for the audit?
A. As a general matter, yes.
Q. Since leaving Deloitte & Touche, have you performed -- have you had a role like being

J. Garvey

an engagement partner for any -- in any audit? Did you do any auditing at Arthur Andersen, for example?

A. No.

Q. What about at Dearborn Partners?

A. I haven't been an auditor in the context of what you're -- the question you're asking me since I left Deloitte & Touche.

MR. HUME: Let's take a two-minute break.

(Continued on the next page to include the jurat.)

J. Garvey

(Recess; Time Noted: 1:06 P.M.)

(Time Noted: 1:07 P.M.)

MR. HUME: I don't have any more questions. I assume no one else has.

MR. KAY: No questions.

MR. WOOD: Nothing.

THE WITNESS: Thank you.

MR. HUME: Thank you for your time, Mr. Garvey.

THE WITNESS: Thank you.

(Time Noted: 1:07 P.M.)

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JOHN P. GARVEY

Subscribed and sworn to before me this day of 2010.

____

J. Garvey

CERTIFICATE

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That JOHN P. GARVEY, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 13th day of April, 2010.

J. Garvey

INDEX

J. Garvey

NAME OF CASE: In re Lehman Brothers
DATE OF DEPOSITION: April 13, 2010
NAME OF WITNESS: John P. Garvey
Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page ______ Line ______ Reason ______
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Exhibit C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: LEHMAN BROTHERS HOLDINGS INC., *et al.*, Debtors.	Chapter 11 Case No. 08-013555 (Jointly Administered)

Expert Report of

Mark E. Slattery, CFA

March 15, 2010

Table of Contents

List of Appendices

I. INTRODUCTION

1. This report is submitted by Mark E. Slattery. I am an independent consultant with Navigant Economics (Chicago Partners), a subsidiary of Navigant Consulting, Inc., which specializes in applying accounting, economics, and finance to business consulting, legal, and regulatory issues. My qualifications are detailed in Section III and my Curriculum Vitae is included in Appendix I.

2. I have prepared this report at the request of Movants' Counsel. In this report, I set forth subject matter on which I expect to testify, including the substance of the facts and opinions on which I expect to testify, and summarize the foundations for each opinion.[1] As cited within the text and footnotes of this report and/or Appendix II to this report, I have reviewed various documents to prepare this analysis.

II. SCOPE OF ANALYSIS PERFORMED

3. I have been asked by counsel to value certain securities in connection with Barclays' acquisition ("the Acquisition") of certain Lehman Brothers Holdings Inc. ("LBHI") and Lehman Brothers Inc. ("LBI") assets.

4. As an initial matter, in my evaluation of the information available to value the securities Barclays acquired, I observed certain valuation issues highlighted by

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[1] Motion of Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc., et al., Pursuant to 11 U.S.C. § 105(a), Fed. R. Civ. P. 60(b), and Fed. R. Bankr. P. 9024, for Relief from Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, Dated September 20, 2008 (and Related SIPA Sale Order) and Joinder in Debtors' and SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify Sale Order. In re Lehman Brothers Holdings Inc., et al., Debtors Case No. 08-13555 (JMP) (Bankr. S.D. N.Y. Sept. 15, 2009).
The Trustee's Motion for Relief Pursuant to the Sale Orders or, Alternatively, for Certain Limited Relief Under Rule 60(b), (Bankr. S.D. N.Y. Sept. 15, 2009).
Debtor's Motion for an Order, Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Modifying the September 20, 2008 Sale Order and Granting Other Relief (Bankr. S.D. N.Y. Sept. 15, 2009).

substantial divergences between Barclays' acquisition price and that of Barclays' custodial bank, the Bank of New York ("BoNY"). BoNY is a premier custodian in the U.S. marketplace and is subject to extensive regulations and contractual obligations.[2] As such and in light of the substantial divergences, I have identified securities where the absolute value of the difference between Barclays' valuation for any given security and BoNY's valuation exceeded $1 million. In my experience, a valuation difference this significant should have triggered further investigation. These pricing differences included 632 securities, for which I performed an in-depth analysis and valuation. I present valuations based on third party pricing sources for approximately 6,035[3] securities acquired by Barclays in addition to the 632 security valuations.

5. I calculated the fair value of a total of 6,667 securities acquired by Barclays in the Acquisition. My independently calculated values are based on a robust valuation framework, state of the art models and data libraries customarily used by market participants, including Barclays itself, and are supported by currently available empirical research of the actual market conditions and pricing information that was available to Barclays at the time of its valuations. For the securities that were not part of my independent value calculations, I assigned unbiased prices collected from independent third party market pricing sources.

6. Barclays' estimated values were based on arbitrary and indefensible discounts taken by Barclays. Indeed, Barclays employed certain valuation techniques in the Acquisition that massively undervalued acquired assets. As a result of this flawed

[2] See Expert Report of John Schneider.
[3] In the case of 40 securities, where Barclays failed to provide information related to the particular security, and where I was able to obtain third party pricing information but unable to obtain information other than third party pricing, I performed valuations based on third party pricing.

process, Barclays significantly undervalued the aforementioned securities by at least $2.38 billion.[4]

7. Navigant Economics (Chicago Partners) charges an hourly rate of $500 for my time. Other Navigant Economics (Chicago Partners) professionals, working under my direction and supervision, assisted in my analysis and they will be compensated for their work at their customary hourly rates. Our compensation is not contingent in any way on the outcome of this matter.

8. The remainder of the report is organized as follows: Section III summarizes my qualifications and the qualifications of my team; Section IV summarizes my opinion; Section V details my opinion and provides the bases thereof.

III. <u>SUMMARY OF QUALIFICATIONS</u>

9. My present position is Independent Consultant at Navigant Economics (Chicago Partners), a subsidiary of Navigant Consulting, Inc. Navigant Economics (Chicago Partners) specializes in consulting in the areas of accounting, economics, and finance. I am a Chartered Financial Analyst and my areas of expertise include residential mortgage investments, financial modeling and risk management.

10. Prior to joining Navigant Economics (Chicago Partners), I was a Senior Vice President in the Asset/Liability Management & Economics Group at LaSalle Bank Corporation (a member of the ABN AMRO Group), specializing in residential mortgage analytics and investment portfolio activities. Before joining LaSalle Bank, I spent 8 years as the Co-Managing Director of the Subject Matter Consultants at Quantitative

[4] I have reviewed the available data regarding market conditions from the close of business in the United States on Friday, September 19, 2008 to the opening of business in the United States on Monday, September 22, 2008 and have concluded that my valuations that are based on closing prices on September 19, 2008 would not change materially if rolled forward to September 22, 2008.

Risk Management, specializing in consulting on the modeling and valuation of a wide array of fixed income securities and related hedge vehicles. Previous to joining QRM, I worked as a Thrift Regulator and Senior Financial Analyst for the Federal Home Loan Bank of Chicago, specializing in the oversight of capital markets activities of member institutions.

11. The team that has supported me includes fixed income and mortgage securities valuation professionals with extensive experience at major financial institutions. My team has significant experience in trading fixed income securities and valuing them for financial reporting purposes. I have worked with these team members previously to analyze and value other similar products.

IV. SUMMARY OF OPINION

12. In this section of my report, I summarize my opinion. In the remaining sections of the report, I provide the substance of the facts and opinion of which I expect to testify, and the bases for this opinion. I reserve the right to supplement my analysis in response to any newly produced evidence or in rebuttal to any further opinions offered by Barclays' witnesses. I also reserve the right to do a more comprehensive CUSIP-by-CUSIP valuation, if necessary, of those securities I did not independently value for purposes of my report.

Opinion 1: Barclays undervalued 6,667 securities acquired by Barclays from LBHI and LBI by at least $2.38 billion.

13. As detailed in Table 1 below, I have replicated the results from Professor Pfleiderer's Table 1 analysis[5] by comparing my own valuation results with Barclays' valuation results.

[5] Expert Report of Professor Pfleiderer, ¶53.

Table 1: Summary of Valuation Differences for All Valuations
(amounts in millions of dollars)

Replication of Professor Pfleiderer Table 1 Report Category	Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
Residential Mortgage Backed Securities	3,834	$12,620	$13,561	$941
Corporate Bonds	501	$1,119	$1,111	-$7
Emerging Markets	69	$225	$224	$0
Equities				
Rates	1,154	$14,507	$14,983	$476
Principal Mortgage Trading Group	1,109	$2,064	$3,036	$972
Total	6,667	$30,534	$32,915	$2,380

V. OPINION AND BASIS THEREOF

14. This section discusses my opinion and the bases of my opinion.

Opinion 1: Barclays undervalued 6,667 securities acquired by Barclays from LBHI and LBI by at least $2.38 billion.

15. Barclays undervalued U.S. Treasury and Agency debt securities, Agency and non-Agency Residential Mortgage-Backed Securities ("RMBS"), Collateralized Loan Obligations ("CLOs"), Collateralized Debt Obligations ("CDOs"), Commercial Mortgage-Backed Securities ("CMBS") and other securities acquired from LBHI & LBI by an amount of at least $2.38 billion. As detailed in Table 1 above, I have replicated the results from Professor Pfleiderer's Table 1 analysis[6] by comparing my own valuation results with Barclays' valuation results.

16. In the following section of the report, I describe the valuation results from each of the categories identified in Table 2, below. These descriptions correspond to the order in which the securities are described in Table 2. The total undervaluation described in my Table 2 equals the total undervaluation in Table 1.

[6] Expert Report of Professor Pfleiderer, ¶53.

Table 2: Summary of Valuation Differences for All Valuations
(amounts in millions of dollars)

Expert Report Valuation Summary by Individual Asset Class	Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
A. U.S. Treasury and Agency Debt Securities	125	$12,778	$13,203	$424
B. Agency RMBS	308	$5,821	$6,549	$728
C. Non-Agency RMBS	162	$512	$898	$387
D. Collateralized Loan Obligations excl. Pine	6	$46	$58	$12
E. Pine CLO	1	$429	$817	$389
F. CDOs and CMBS	30	$192	$213	$22
G. Third Party Valuations	6,035	$10,757	$11,176	$419
Total	6,667	$30,534	$32,915	$2,380

A. BARCLAYS UNDERVALUED 125 U.S. TREASURY AND AGENCY DEBT SECURITIES BY $424 MILLION.

17. I independently valued 125 distinct U.S. Treasury and Agency securities. I valued those securities at $13,202,512,065, as of September 19, 2008. Barclays' values were very similar to those that I calculated before Barclays' liquidity discounts were applied that were, based upon my research and analysis, unjustified and excessive for those securities at that point in time. Table 3 below summarizes the difference between my valuations and those of Barclays.

Table 3: Summary of Valuation Differences for
US Treasury and Agency Debt Securities
(amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
125	$12,778	$13,203	$424

18. Several reasons for Barclays' undervaluation of these securities are identified below.

1) **Barclays took a 5% across-the-board liquidity discount on U.S. Agency debt securities without considering the maturity of each**

individual instrument; this resulted in implicit and indefensible annualized yields as high as 643.4%.

19. Barclays' valuation of the security listed as the first security in Table 4 below was a $50 million discount note that Barclays initially valued at $99.99 for a note maturing on September 22, 2008. Barclays took a 5% discount from the $99.99 value to revalue that note at acquisition. The result of this was a discount of the note's value by $2.5 million. This note would have provided the holder a payment of $100.00, or its par value, providing a total return of principal to the holder three days after the September 19, 2008 acquisition. Based on a $99.99 price, this $100.00 payment reflected an approximate 1.2% yield. In stark contrast, Barclays' adjusted price of $94.99 implied a "yield" or return of 643.4%. Furthermore, Barclays' valuation is more suspect because this security would have settled at par and payment would actually have been received by Barclays long before Barclays' acquisition balance sheet was prepared.

20. This example highlights the deficiencies in Barclays' valuation methodology. Barclays' approach was indiscriminate, unsupported by market data and excessive in light of prevailing market conditions. Table 4 below exemplifies the deficiencies in Barclays' valuation.

Table 4: Yield Analysis of Discount Notes

Settlement Date: **9/19/2008**

	CUSIP	Description	Face Amount ($ millions)	Maturity Date	Fair Value ($ millions) Barclays	Chicago Partners	Difference	Yield Barclays
1	RTD019828	USD Fmcdn 0.0 22 Sep 2008 Rg	$ 50.0	09/22/08	$ 47.5	$ 49.9	$ 2.4	643.4%
2	RTD019885	USD FHLBDN 0.0 26 Sep 2008 Rg	$ 28.8	09/26/08	$ 27.4	$ 28.8	$ 1.4	276.8%
3	313396H89	USD Fmcdn 0.0 30 Sep 2008 Rg	$ 926.9	09/30/08	$ 880.2	$ 925.1	$ 44.9	176.2%
4	RTD019971	USD Fmcdn 0.0 01 Oct 2008 Rg	$ 50.0	10/01/08	$ 47.5	$ 49.9	$ 2.4	162.8%
5	313588K79	USD Fndn 0.0 15 Oct 2008 Rg	$ 400.0	10/15/08	$ 379.5	$ 399.0	$ 19.4	76.0%
6	313384M71	USD FHLBDN 0.0 31 Oct 2008 Rg	$ 100.0	10/31/08	$ 94.8	$ 99.7	$ 4.9	48.0%
7	313384P52	USD FHLBDN 0.0 14 Nov 2008 Rg	$ 61.8	11/14/08	$ 58.5	$ 61.5	$ 3.0	36.7%
8	313396Q71	USD Fmcdn 0.0 24 Nov 2008 Rg	$ 250.0	11/24/08	$ 236.6	$ 248.8	$ 12.3	31.5%
9	313588R31	USD Fndn 0.0 28 Nov 2008 Rg	$ 100.0	11/28/08	$ 94.6	$ 99.5	$ 4.9	29.9%
10	313384T41	USD FHLBDN 0.0 15 Dec 2008 Rg	$ 44.8	12/15/08	$ 42.4	$ 44.6	$ 2.2	24.5%
11	313588T62	USD Fndn 0.0 17 Dec 2008 Rg	$ 100.0	12/17/08	$ 94.5	$ 99.4	$ 4.9	24.0%
12	313396V34	USD Fmcdn 0.0 30 Dec 2008 Rg	$ 150.0	12/30/08	$ 141.6	$ 149.0	$ 7.4	21.3%
13	313396V42	USD Fmcdn 0.0 31 Dec 2008 Rg	$ 150.0	12/31/08	$ 141.6	$ 149.0	$ 7.4	21.1%
14	313588V44	USD Fndn 0.0 31 Dec 2008 Rg	$ 150.0	12/31/08	$ 141.6	$ 149.0	$ 7.4	21.1%
15	313397DS7	USD Fmcdn 0.0 30 Mar 2009 Rg	$ 150.0	03/30/09	$ 140.5	$ 147.8	$ 7.3	12.9%
16	313589GE7	USD Fndn 0.0 29 May 2009 Rg	$ 150.0	05/29/09	$ 139.8	$ 147.1	$ 7.4	10.6%
	Total/Weighted Average		**$ 2,862.2**		**$ 2,708.3**	**$ 2,848.2**	**$ 139.9**	**96.6%**

21. I applied discounts on U.S. Agency debt securities based on actual market data for comparable instruments taking into account the maturity of the bond and prevailing bid-offer spreads on a bond-by-bond basis. These discounts ranged from 0.14% to 1.22% of midpoint values, significantly smaller than Barclays' 5.0% discount.

22. Barclays' liquidity discount was particularly excessive given that the U.S. government acted to provide additional liquidity prior to September 22, 2008 to the U.S. Agency securities market. For example, on September 7, 2008, the U.S. Treasury entered into senior preferred stock purchase agreements with Fannie Mae and Freddie Mac, which effectively provided protection to holders of senior debt, subordinated debt, and MBS issued or guaranteed by these entities. As an additional measure to support the financial markets, the Federal Reserve announced on September 19, 2008 that it would begin purchasing short term debt obligations issued by Fannie Mae, Freddie Mac, and

the Federal Home Loan Banks in the secondary market. These facts further undermine the validity of the approach taken by Barclays.

23. Barclays did not differentiate between asset types and their inherent risk characteristics when applying the 5% liquidity discount. For example, Barclays applied a 5% liquidity discount to both covered bonds and U.S. Agency debt. Covered bonds are foreign bank debt instruments secured by mortgage loans. In the U.S. market, covered bonds are much less liquid than U.S. Agency debentures. Nevertheless, Barclays applied the same high 5% discount to U.S. Agency debt securities that it applied to covered bonds.

24. Barclays' universal application of a 5% liquidity discount on all U.S Agency securities resulted in an excessive $462.7 million discount in the valuation. For Agency securities, as reflected on Schedules A and B,[7] Barclays listed an aggregate value of $9.255 billion prior to assigning the liquidity discount and an aggregate value of $8.792 billion after universally integrating the 5% discount, a reduction of $462.7 million.[8]

2) **In contrast to Barclays' generic approach, I valued U.S. Treasury and Agency securities using either actual, observable price quotes or by discounting each security-specific structured cash flow by actual, observable comparable market yields.**

25. U.S. Treasury securities are AAA rated and are essentially credit-risk free. U.S. Treasury securities are, in fact, the most liquid instruments in the capital markets universe, and typically trade at prices where the difference between the "bid," meaning the price at which such a security could be purchased and the "offer," meaning the price at which such a security could be sold, i.e., the "bid-offer spread," are as small as 0.00 to

[7] BCI-EX-00099159 (Dep. Ex. 86B); BCI-EX-(S)-00213995 (Dep. Ex. 641A).
[8] BCI-EX-00099159 (Dep. Ex. 86B); BCI-EX-(S)-00213995 (Dep. Ex. 641A).

0.03%. Based on my research and analysis of observed actual market data for the "bid-offer spread," I incorporated a liquidity discount on U.S. Treasury securities ranging from 0.03% to 0.06% of the price.

26. Unlike U.S. Treasury securities, U.S. Agency securities do have some credit risk. For U.S. Agency securities with no available market quotes, I valued them by discounting their associated cash flows while taking into account the credit risk component by applying actual observable market yields from comparable Agency securities.

27. Finally, I calculated fair values for each U.S. Treasury and Agency security by reducing their midpoint values by an applicable and supportable liquidity discount as evidenced by actual market data.

B. BARCLAYS UNDERVALUED 308 AGENCY RMBS BY $728 MILLION.

28. I independently valued 308 distinct Agency RMBS. I valued those securities at $6,549,047,039 as of September 19, 2008. These results are summarized below in Table 5.

Table 5: Summary of Valuation Differences
Agency RMBS
(amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
308	$5,821	$6,549	$728

29. Barclays' value of $5,821,257,372 is understated for a number of distinct reasons set forth below.

1) **Neither Barclays, nor its expert Professor Pfleiderer, provided any detailed model documentation or analysis to support the values they ascribe to these securities.**

30. Professor Pfleiderer did not, in fact, independently value any of these securities. Instead, he simply accepted Barclays' methodology for deriving an "exit price" for these securities by taking a flat, across-the-board 10% discount from the value of these securities.[9]

31. Professor Pfleiderer opined that Barclays valued Agency Collateralized Mortgage Obligations ("CMOs"), specifically complex floaters, interest only ("IO")[10] and inverse IO securities, using midpoint marks that were subsequently reduced by a 10% liquidity discount to establish exit price marks. According to Professor Pfleiderer, Barclays' "exit price marks were reasonable and appropriate given the relevant risks and liquidity issues associated with these securities."[11]

32. Barclays used two approaches to estimate the liquidity discount for Agency CMOs. In the first approach, Barclays took price observations from various unnamed sources and noted that the average variance was 10%. The second approach involved reviews of observed buys and sells of 39 Agency CMOs that occurred on the same date. The weighted average difference between these prices was noted as 10.5%.[12] Barclays incorrectly used this data as a proxy for its liquidity discount.

2) **Barclays apparently calculated liquidity discounts using differences between purchase and sales prices, which provided no description as to the source, the time of day for which they were provided, or**

[9] Expert Report of Professor Pfleiderer, Appendix Four, Section Four, P. 110.
[10] An Interest Only mortgage security pays a coupon based only on a notional principal; it receives no principal payments from amortization or prepayments. An Inverse Interest Only mortgage security pays a coupon that moves opposite to its index based only on a notional principal.
[11] Expert Report of Professor Pfleiderer, Appendix Four, Section Four, P. 110.
[12] PwC-BarCapWP_00023327.

whether the prices were actual traded prices, bids, offers, or price indications.

33. Prices were simply given by Barclays to PwC over a given day, as if they represented the simultaneous bid-offer spread, justifying its determination of the liquidity discounts. A review of a listing of combined bid and offer prices, without regard to whether they occur at the same or a different time of day, and with no information as to the source, is not representative of the bid-offer spread. The commonly used definition of a bid-offer spread is the difference between the price at which a dealer is willing to purchase or sell a given security simultaneously at a particular moment in time. Barclays neither provided nor incorporated such an analysis in its valuation.

34. In contrast to Barclays' flawed methodology, I used empirical bid-offer spreads to derive liquidity discounts. I did not use trading ranges for various securities as proxies for bid-offer spreads.

35. Although Professor Pfleiderer did not conduct any independent analysis, he reviewed documentation from PwC and stated that Barclays used an "average" for the liquidity discount and that this "average" was a fair representation of the population of securities.[13] These are not accurate statements.

36. First, the percentage composition of the portfolio Barclays used for deriving the average was not the same as the percentage composition of the Lehman portfolio of securities that is the subject of the valuation. For example, Inverse IO securities comprised 51% of Barclays' benchmark portfolio. However, Inverse IO securities only comprised 13% of the Agency MBS portfolio subject to valuation. This means that the

[13] PwC-BarCapWP_00023327.

average liquidity discount used by Barclays is significantly skewed towards one type of security and is not representative of the population subject to valuation.

37. Second, the Inverse IOs had a much higher bid-offer spread, as defined by Barclays, than the other types of securities in Barclays' benchmark portfolio. For example, Barclays claims that the bid-offer spread was approximately 16% for Inverse IOs. The majority of the other types of securities in Barclays' own benchmark portfolio had a bid-offer spread of approximately 0.03%. Therefore, the "average" liquidity discount applied by Barclays was not only skewed on a "frequency" basis, but also a "magnitude" basis.

38. Lastly, Barclays incorrectly assessed a 10% liquidity discount across a broad and diverse set of asset types within the Agency RMBS category. In contrast, I applied liquidity discounts by product type and did not use an average to generalize across all the various types of tranches of a CMO deal. I did so because each tranche has a different level of liquidity in the marketplace as the liquidity of a particular type of CMO tranche is directly related to its complexity, hedging difficulty, and term-to-maturity.

39. Barclays made other fundamental errors in its valuation of the Agency RMBS. According to Barclays' accountants, certain RMBS were valued by Barclays using a discounted cash flow approach incorporating the BlackRock prepayment model and an estimate of required market yields. Based on my understanding of this analytical configuration, Barclays used a valuation methodology that did not take into account the variability of outcomes given different market conditions. This means that Barclays assumed a single set of cash flows and assigned a single discount rate to value each security. As a result, the variability of potential outcomes, e.g., differences in mortgage

prepayment rates by borrowers leading to variable valuation outcomes, was not accurately factored into Barclays' valuation.[14]

3) **In contrast to Barclays' modeling approach, I valued these securities using a pricing framework that accounted for the variability of potential outcomes by incorporating prepayments under multiple interest rate scenarios to capture the value associated with embedded options.**

40. Further discussion regarding dynamic pricing of Agency RMBS and each of the related model components is provided in Appendix III of this report.

41. For a subset of the Agency RMBS that I valued, specifically 24 CUSIPs, I obtained actual price quotes from multiple broker/dealers.

42. For the remaining Agency RMBS that I valued, I used an industry standard and widely recognized valuation technique to establish "mid" prices, i.e., prices midway between prevailing bids and offers.[15] I applied liquidity discounts to midpoint prices to reflect varying levels of liquidity for different mortgage product types in order to derive market values. The liquidity discounts I used are based on empirical research and market intelligence related to bid-offer spreads for various mortgage product types in both "normal" and "stressed" market environments. I calculated market values for each Agency RMBS by reducing midpoint prices by their liquidity discounts in a "stressed" market environment.

C. BARCLAYS UNDERVALUED 162 NON-AGENCY RMBS BY $387 MILLION.

[14] Although appropriate for non-contingent cash flow instruments, including corporate debt instruments that contain no option-like features (e.g., call/put provisions), the pricing approach used by Barclays is insufficient for purposes of valuing Agency RMBS. Barclays' approach does not accurately capture the value associated with options embedded in the underlying collateral and it led to a substantial undervaluation of this collateral.

[15] This standard methodology is referred to as "breakeven analysis." Barclays Capital, Securitization Research, January 8, 2010; Bank of America RMBS Trading Desk Strategy, October 23, 2006.

43. I independently valued 162 distinct non-Agency RMBS. I valued those securities at $898,447,679, as of September 19, 2008. The results are summarized below in Table 6.

Table 6: Summary of Valuation Differences for Non-Agency RMBS (amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
162	$512	$898	$387

1) **Barclays did not provide detail or support for its valuation of non-Agency RMBS.**
2) **The Pfleiderer report accepts Barclays' use of sales prices obtained after September 22, 2008 in valuing non-Agency RMBS despite Professor Pfleiderer's acknowledgement that "as a general matter, one must use ex post outcomes with considerable care."[16]**

44. For analytical purposes, the non-Agency RMBS that I valued were segregated into two categories: stripped non-Agency RMBS, i.e., private label IOs and POs and non-Agency RMBS. The segregation was warranted due to key valuation drivers. For non-Agency IOs and POs, voluntary prepayments represent the key value driver. For the other non-Agency RMBS that I valued, credit-related events, i.e., defaults and losses, represent the key value drivers.

45. The approach I took to value private label RMBS IOs and POs was very similar to the one used to value Agency RMBS. In particular, the valuation framework included a standard state of the art term structure model,[17] a current coupon model,[18] a prepayment

[16] Expert Report of Professor Pfleiderer, ¶66.
[17] The Brace Gatarek Musiela model (See Appendix III).

model,[19] and a deal cash flow library.[20] I applied specific liquidity discounts on an individual bond-to-bond basis to midpoint prices to reflect the appropriate level of additional credit and liquidity risk. The amount of the liquidity discount in percentage terms was based on the difference between the price of select non-Agency RMBS and Agency RMBS with similar characteristics as of the valuation date.

46. Material public information exists for an overwhelming majority of these credit sensitive non-Agency RMBS. One such source of this material public information is known as the ‘remittance report.’ A remittance report contains updated information on payments and collateral performance and it is issued in accordance with the pay date of the given security, which is, in the majority of cases, the 25th of each month.[21] The vast majority of the credit sensitive non-Agency RMBS that I valued make monthly payments on or after the 25th of the month. Monthly remittance reports contain substantial information on the status of the deal and, therefore, could easily change the market’s assessment of the performance of the bond. Given the material change in market information after September 25, 2008, Barclays’ use of post-September 25, 2008 prices was inappropriate for valuing the assets’ market values as of September 19, 2008.

47. The use of ex-post pricing is inappropriate as market conditions change over time, as market conditions impact the value of any particular security. In addition, Barclays sold a significant amount of the acquired non-Agency RMBS portfolio during a short

[18] See Appendix III for details of the current coupon model (See Appendix III).
[19] The Andrew Davidson & Co, model (See Appendix III).
[20] Intex (See Appendix III).
[21] Or the first business day following if the 25th lands on a weekend. The 25th of September 2008 was a Thursday.

time frame. Therefore, the sale prices do not reflect an orderly disposition of these assets, but a "fire sale."[22]

48. Barclays' valuation does not represent the "fair value" of the credit sensitive non-Agency RMBS that I valued, and therefore, should be disregarded. It remains unclear how many of these "sales" were transfers within Barclays to internal trading desks and how many were legitimate third party sales. In any event, Barclays' use of post-transaction prices was inappropriate. All of the sales occurred after the assets had been transferred to Barclays and are irrelevant for purposes of this valuation. In addition, when measured against Barclays own internal marks, the resulting loss on these securities signifies a "fire sale" and/or sales to internal trading desks at deeply discounted prices. Since the "fair value" of any asset should reflect an orderly disposition of the asset, Barclays' reliance on such "sale prices" to value these securities is clearly inappropriate.[23]

3) **Contrary to Barclays' ad hoc approach, my approach for valuing credit sensitive non-Agency RMBS was consistent with industry practice.**

49. In my valuation of these securities, I used the Intex deal library to obtain information regarding the structure of the bonds as well as the characteristics and delinquency status of the underlying mortgages as of September 19, 2008. I also used contemporaneous research to develop an appropriate loss curve and industry standard ABX[24] indices to derive an appropriate discount rate. After determining an appropriate

[22] Expert Report of Professor Pfleiderer, Appendix Four, Section Six, P. 110.
[23] Expert Report of Professor Pfleiderer, Appendix Four, Section Three, P. 109.
[24] As stated on Markit's website the ABX is "A barometer of the conditions in the subprime mortgage market throughout the financial crisis has been the ABX.HE indices administered by Markit. There are four Markit ABX.HE indices, each a synthetic tradeable index referencing a basket of 20 subprime mortgage-backed securities from a particular vintage by period of issuance. Each ABX.HE index covers a

loss curve, i.e., calculation of default expectation based on detailed analysis of underlying mortgage collateral data,[25] prepayment input and discount rate, I used the Intex modeling platform to value each of these securities. Finally, to be conservative, I applied an additional liquidity discount to derive my final values.

D. BARCLAYS UNDERVALUED 6 CLOS (EXCLUDING THE PINE CLO) BY $12 MILLION.

50. I independently valued 6 distinct CLO securities, other than the Pine CLO, which is discussed on pp. 19, below. My independent valuation of these securities was $57,834,688 as of September 19, 2008. The results are summarized below in Table 7.

Table 7: Summary of Valuation Differences for Collateralized Loan Obligations (amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
6	$46	$58	$12

51. Barclays did not provide details or analysis to support its modeling of CLO securities.

52. In my independent valuation of the 6 non-Pine CLOs, I applied industry accepted valuation techniques and developed market based inputs for reinvestment rates, loss rates and prepayments.

six-month period of subprime MBS originations from the second half of 2006 through the first half of 2007. Each ABX.HE index consists of six tranches corresponding to different ratings and positions in the capital structure. ABX.HE has become a benchmark for the performance of subprime RMBS. Its liquidity and standardization allows investors to accurately gauge market sentiment around the asset-class, and to take short or long positions accordingly."

[25] See Appendix IV.

53. These inputs were then loaded into the Intex cash flow model. I discounted these cash flows based on a discount rate[26] determined from broker/dealer research as of September 19, 2008 based on each CLOs credit rating and capital structure. I then applied an additional liquidity discount to derive my final CLO values.

1) **Barclays' values as of September 19, 2008, were very similar to the values that I calculated; however, Barclays failed to demonstrate any basis or analytical justification for taking a 21% discount to arrive at their exit value.**

E. BARCLAYS UNDERVALUED THE PINE CCS CLO BY $389 MILLION.

54. Barclays misunderstood the structure of and materially undervalued the Pine[27] CCS CLO ("Pine") by $388.7 million. The value of the Class A-1 tranche of Pine that I valued independently was $817,297,291 as of September 19, 2008. The results are summarized below in Table 8.

Table 8: Summary of Valuation Differences for the Pine CLO (amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
1	$429	$817	$389

1) **Barclays materially misunderstood the structure of Pine, apparently concluding that Pine had the typical structure of a "revolver" CLO.**

55. Barclays' assumption that the unfunded obligations accrue to the senior tranche was erroneous. More typically with CLOs, but not in the case of Pine, when an underlying borrower requests an additional draw on its credit line, the holder of the

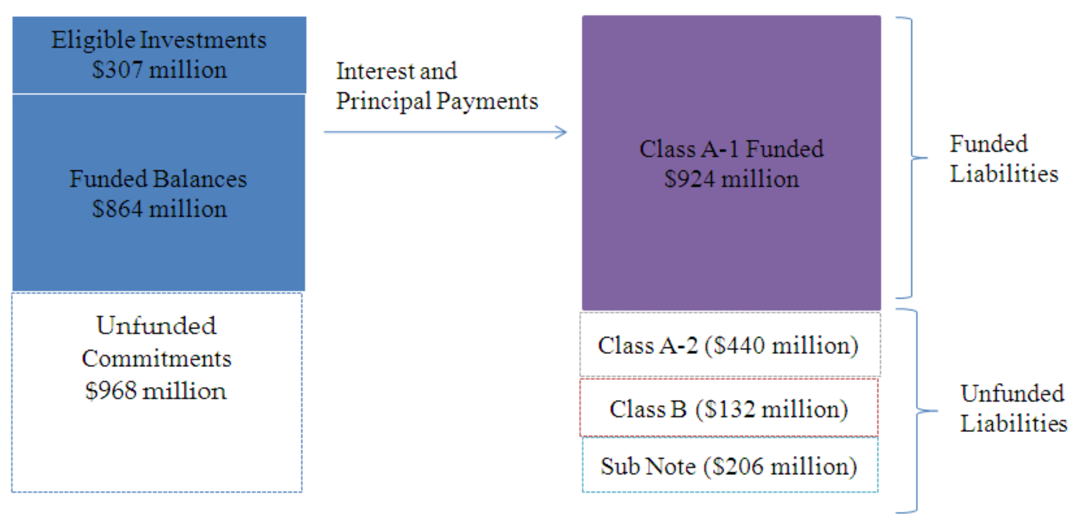
[26] DM (discount margin).

[27] Pine is a collateralized loan obligation backed by revolving lines of credit to 55 corporations from different industry sectors. The loans were originated by Lehman who then established a Trust to issue the CLO. Only the senior Class A-1 tranche was acquired by Barclays as a result of the Acquisition. All of the junior tranches continue to be held by Lehman.

senior tranche is usually responsible for providing the additional funds. However, Pine had an "inverted" structure—i.e., any additional funding came from the holder(s) of the junior tranche, which in this case was a bankrupt entity as of the closing date.

56. At the time that Barclays acquired the Class A-1 tranche, information in Barclays' possession indicated that Pine had $367 million in cash, $697 million in funded loans, and another $1,140 million in unfunded commitments, i.e., the additional funding required if borrowers went to their full credit limits.[28] The Class A-1 tranche had an initial notional value of $1,025 million, representing the initial funding of the CLO. The Pine structure is pictured in Table 9 below.

Table 9: Pine CLO



[28] Information available from the Trustee for the Pine CLO on September 19, 2008, shows that the CLO has cash of $307 million, funded loans of $864 million, and unfunded commitments of $968 million. Included in the 307 million of cash is the variable funding account of approximately $265 million. I have reviewed several trustee reports for the months before and after September 2008 and have been unable to find the source of Barclays amounts reflected in this paragraph.

2) In deriving its valuation, Barclays failed to recognize the inverted structure of the CLO and its own senior position within that structure.

57. Barclays itself failed to recognize that in the Pine structure, Barclays' senior Class A-1 position was fully funded and not responsible for any additional cash contributions that could arise from additional funding requests from the underlying borrowers.

58. Instead, Barclays incorrectly assumed a 70% probability that Barclays, as the holder of the Class A-1 tranche, would be obligated to fund the entire amount of the remaining balance available to be drawn upon by the underlying borrowers. Barclays also failed to recognize that the deal documents provided that Lehman, a bankrupt entity, would be responsible for providing any additional funding.

59. Barclays incorrectly valued cash and loans totaling $1,064 million at $428.6 million (or at a price of 40.3 cents on the dollar). Barclays, as the holder of the class A-1 tranche, would have first claim on the assets of the CLO, which according to Barclays, included $367 million of cash investments and $697 million of funded loans, totaling to over $1 billion.

60. Had Barclays properly recognized the structure of Pine, and left all of their other valuation assumptions, probabilities and scenarios the same, Barclays' valuation would have been significantly higher. Correcting Barclays' analysis only for the fact that its A-1 tranche is fully funded and completely protected from any funding risk, Barclays' model would have valued Pine at $883 million.

3) Barclays inappropriately applied a 20% "participation" discount when valuing the underlying collateral.

61. Given that the collateral is owned by the CLO trust and not Lehman, the security interest in the loans is not at risk. I have researched this issue and have found no

instance where a master participation agreement in a CLO was not enforced in a bankruptcy.

62. The security Barclays received is the highest and only funded tranche of the CLO. Since Barclays is in the first loss position and has no additional funding liabilities, any hypothetical funding by subordinate tranches would accrue to Barclays benefit. As a result, Barclays is not subject to the funding risks that would convert additional capital in the form of cash advanced to a borrower to funds worth 80 cents, or less, on the dollar. This risk belongs solely to the subordinate tranches.

4) **Professor Pfleiderer performed little to no due diligence when reviewing Barclays' valuation of Pine.**

63. Professor Pfleiderer and his team, or those under his direction, failed to consider important variables of the Pine deal that are integral to valuation of such securities. Aside from an "extensive search on -- on Google,"[29] Professor Pfleiderer, or those working at his direction, apparently did not review offering documents, trustee remittance reports, or any other relevant deal documents.

64. Appendix IV to Professor Pfleiderer's report incorrectly attempts to support Barclays' value for Pine. One comment in Professor Pfleiderer's report focuses on the alleged credit quality and concentration risks of the underlying portfolio of loans.[30] In reviewing LoanX,[31] I observed that on September 19, 2008, 20 of the 55 underlying loans making up approximately 50% of the value of the underlying collateral reflected a weighted average price of 90.2. Both Barclays internal valuation memo prepared by

[29] Professor Pfleiderer Deposition, page 219.
[30] Expert Report of Professor Pfleiderer, Appendix Four, Section 8, P. 116.
[31] LoanX is provided by Markit. Markit is the leading provider of independent loan market data and loan portfolio management software and is currently used by over 400 financial institutions to manage over $1 trillion in assets.

Barclays' Product Control Group and the Pfleiderer Report ignore readily available market data for the underlying loans and fail to properly interpret relevant Trustee reports and the September 16, 2008 S&P downgrade.[32]

65. The Pfleiderer Report provided no relevant analysis of any kind and simply accepted the material errors in Barclays' exit values.

F. BARCLAYS UNDERVALUED 30 CDOS AND CMBS BY $22 MILLION.

66. I independently valued 30 CDO and CMBS. My independent valuation of those securities was $213,394,108 as of September 19, 2008. The results are summarized in Table 10, below.

Table 10: Summary of Valuation Differences for Collateralized Debt Obligations and Commercial Mortgage-Backed Securities
(amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
30	$192	$213	$22

67. CDO valuations were conducted using market indices and market research based on the Intex cash flow modeling platform. These market based inputs included both collateral and cash flow timing and discount rates. The collateral inputs and discount rates were input into the Intex cash flow model to arrive at a price; an additional liquidity discount was then applied to derive my final CDO values.

[32] S&P's downgrade of Barclays' A-1 tranche was purely technical and due to Lehman's bankruptcy and is not related to the value or performance of the underlying collateral. The A-1 tranche receives all of the cash flow from the underlying loans post-Lehman bankruptcy regardless of the credit downgrade. As noted above, the underlying loans were reflected slightly above 90 in the market on September 19, 2008.

68. I independently valued CMBS using market research to determine the appropriate Constant Default Rate ("CDR"), severity rate, and prepayment rate of the underlying commercial mortgages. Each CMBS was then categorized by rating, seniority, and security type. Using published research, a discount rate was determined for each category and assigned to the CMBS. The collateral inputs and discount rate were input into the Intex cash flow model to arrive at a price; an additional liquidity discount was applied to derive my final CMBS values.

G. BARCLAYS UNDERVALUED 6,035 OTHER CUSIPS BY OVER $400 MILLION.

69. As summarized in Table 11 below, Barclays undervalued 6,035 securities by $419 million.

Table 11: Summary of Valuation Differences for
for Third Party Valuations
(amounts in millions of dollars)

Number of CUSIPs	Barclays' Opening Balance Sheet Valuation	9/19/2008 Valuation (at Exit Marks)	Valuation Difference (Barclays' Undervaluation)
6,035	$10,757	$11,176	$419

70. For these securities, including duplicates, I extracted prices from multiple sources: Bloomberg ("BVal" 2,933 CUSIPs; "BGN" 3,059 CUSIPs), Capital IQ (1,005 CUSIPs), FactSet (863 CUSIPs), and Interactive Data (749 CUSIPs). The total count of CUSIPs with at least one third party price was 4,608 (76.4%). No prices were available for 1,427 securities (23.6%). The gathered prices represented closing or bid prices on September 19, 2008, and were treated as midpoint prices for purposes of this analysis. For 31

CUSIPs, the prices were thrown out as inconsistent with the underlying security (credit, scaling issues, etc.). [33]

71. For the remaining 4,577 securities with prices, an average price was then computed by CUSIP. [34] The average prices generated were then screened for compatibility with BoNY and Barclays prices (i.e., scaling issues, outlier observations, etc.). To facilitate this, all 6,035 securities in the third party universe were classified into 8 categories (including Other/Unknown) across the various groups (Rates, PMTG, Corps, etc.). When third party prices were available, percentage differences were calculated from both BoNY and Barclays' prices in each of the 8 categories. Where price percentage differences were outside two standard deviations from both BoNY and Barclays, the third party prices were discarded as outside of range. An additional 62 prices were thus discarded, leaving a total of 4,515 securities for which third party pricing was used.

72. To facilitate the application of liquidity discounts, sub-categories were then created in the Agency RMBS section. Liquidity discounts that were derived through empirical research were then applied to the average prices by asset sub-category. Agency debentures were separated into maturity buckets before liquidity discounts were

[33] Interactive prices are excluded on 6 CUSIPs (31396X6J8, 31397T4K5, 3837H13L3, 50177AAP4, 86361JAE0, and 94983KAJ8) based on scaling issues on notional IO products. Interactive price for CUSIP 31395WA31 is excluded due to incompatibility with inverse floater pricing. For 24 CUSIPs of Lehman structured notes (5249083B4, 5249083H1, 5249087D6, 5249087K0, 524908L73, 524908MB3, 524908MG2, 524908N30, 524908UK4, 524935BE2, 524935BG7, 524935CX9, 524935DK6, 52517P4M0, 52517P6Z9, 5252M0AW7, 5252M0BG1, 5252M0BQ9, 5252M0CJ4, 5252M0CX3, 5252M0DT1, 5252M0FB8, 5252M0FR3, 5252M0FV4), prices from FactSet and Capital IQ are excluded due to inconsistency with prices observed for Lehman underlying credit exposure.

[34] For 13 CUSIPs (912795K75, 912795K59, 912795J77, 912795S28, 313384J83, 313588L86, 313588M77, 313384M30, 313384Q44, 313384Q77, 313589CF8, 313589CN1, and 912795J28), Bloomberg data pulled was expressed in terms of yields and conversion was made to prices. For 3 CUSIPs, (76116EFH8, 76116EBZ2, and 31771JKU3) Bloomberg data pulled was inconsistent with observed prices and thus discarded. Prices from FactSet and/or Capital IQ were available and used on these 16 CUSIPs.

applied. For corporate debentures, emerging markets, corporate asset-backed securities, private label mortgage securities and municipals, Barclays' discounts were used.

73. For securities where no third-party pricing information was available, I applied liquidity discounts (following the aforementioned logic) to the BoNY prices as of September 19, 2008.

Submitted by

Mark E. Slattery

Mark E. Slattery, CFA

March 15, 2010

Appendix I

Curriculum Vitae

MARK E. SLATTERY, CFA
30 South Wacker Drive, Chicago IL 60606
Phone: (312) 251-5200 Email: Mark.Slattery@naviganteconomics.com

EXPERIENCE

NAVIGANT ECONOMICS **Chicago, IL**
Independent Consultant **January 2010 – Current**

- Manage a team of professionals dedicated to valuing a multi-billion dollar portfolio, consisting of a broad range of securities.
- Lead all aspects of related effort ranging from implementing requisite analytical configuration to writing papers intended to describe model specifications.

FLAGSTAR BANK **Troy, MI**
Internal Consultant **March 2009 – January 2010**

- Served as an internal asset/liability management consultant; participated in a wide array of projects covering all aspects of the on- and off-balance sheet positions.
- Directed the Bank's market valuation and risk measurement efforts related to its $52 billion mortgage servicing rights portfolio.
- Developed and maintained an analytical framework designed to capture the structural risks associated with the Bank's consolidated residential mortgage operations.

JMN CONSULTING **Chicago, IL**
Senior Consultant **October 2006 – November 2008**

- Functioned as the Assistant Portfolio Manager of non-discretionary funds dedicated to the purchase of non-Agency RMBS primarily backed by pay-option adjustable rate mortgages and subprime mortgages.
- Measured market value and related risk metrics for a credit default swap ("CDS") portfolio backed by non-Agency RMBS on a bi-weekly basis.
- Provided monthly fair market valuations and sensitivity profiles for the 2006-1, 2006-2, 2007-1 and 2007-2 ABX Indices.
- Evaluated an extensive portfolio of CDOs on behalf of an investment syndicate.
- Led consulting engagements culminating in physical deliverables written with respect to applicable regulatory guidance.

LASALLE BANK CORPORATION **Chicago, IL**
Senior Vice President **October 2005 – October 2006**

- Managed a team of professionals dedicated to Asset-Liability research; key initiatives included quantifying the Interest Rate Risk component of the Bank's Economic Capital position and enhancing the Bank's market valuation and risk measurement frameworks.

- Co-chair of the Mortgage Advisory Council, which was dedicated to ensuring that the Bank's mortgage analytical models and processes provided the most accurate estimate of the Bank's exposure to mortgage assets and related lines of business.
- Participated as a voting member on two of the Bank's senior committees: the Mortgage Asset-Liability Committee and the Investment Portfolio Committee.
- Ran the Bank's Asset/Liability Consulting Services practice, which was dedicated to enhancing the balance sheet management policies and practices of financial institutions of varying asset size and business focus.

First Vice President **February 2003 – September 2005**

SLATTERY ENTERPRISES **Orland Park, IL**
Principal **January 2002 – January 2003**

- Operated an organization dedicated to the financial services industry, specializing in the disciplines of Asset-Liability Management and Risk Management.
- Acted as Project Manager responsible for the implementation of a commercially available Asset-Liability Management application for a newly formed financial services holding company of a major international corporation.
- Designed a framework to integrate and support analytical routines ranging from the basic (e.g., contractual cash flow generation) to the advanced (e.g., capital optimization).

QUANTITATIVE RISK MANAGEMENT **Chicago, IL**
Vice President, Consultant **February 1994 – December 2001**

- Managed a team of Subject Matter Consultants dedicated to the implementation and on-going support of QRM Asset-Liability clients.
- Provided subject matter consulting on issues related to the QRM Asset-Liability System and the QRM Mortgage Servicing Evaluation System.
    - Modeled financial instruments including MBS, CMOs, callable/puttable notes/bonds, leases, indeterminate deposits, mortgage servicing, cap/floor agreements, swaps, swaptions, futures, futures options.
    - Quantified risk profiles of static balance sheets using subjective rate and volatility shock analysis and objective Monte Carlo VaR Analysis.
    - Derived earnings sensitivity measures using deterministic as well as stochastic analysis; analyzed portfolios using total return analysis.
  - Assisted clients to formulate and execute hedging strategies.
- Wrote and presented materials at industry conferences (Bank Administration Institute), QRM user conferences, and QRM client training sessions.

COOPERS & LYBRAND **Chicago, IL**
Senior Associate **May 1992 – January 1994**

FEDERAL HOME LOAN BANK OF CHICAGO **Chicago, IL**
Senior Financial Analyst **January 1990 – April 1992**

Federal Thrift Regulator **August 1986 – December 1989**

EDUCATION

KELLOGG SCHOOL OF MANAGEMENT, NORTHWESTERN UNIVERSITY **Evanston, IL**
June 1992
MBA, Finance/Accounting

NORTHWESTERN UNIVERSITY **Evanston, IL**
BA, Economics **June 1986**

CERTIFICATION
Chartered Financial Analyst **June 1992**

Appendix II

Documents Relied Upon

Documents in the Record

Depositions

Deponents	Date
Paul Pfleiderer	2/23/2010

Deposition Exhibits

Exhibit	Beginning Bates	Ending Bates
86B - Initial Inventory, Schedule A and B Assets	BCI-EX-00099519	
87B - JPM Inventory, Annex A Assets	BCI-EX-00108700	
495 - Debtor's Motion for an Order, Pursuant to Fed. R. Civ. P. 60 and Fed. R. Bankr. P. 9024, Modifying the September 20, 2008 Sale Order and Granting Other Relief (Bankr. S.D. N.Y. Sept. 15, 2009).		
641A - Email from Sean Teague to Tal Litvin	BCI-EX-(S)-00213990	BCI-EX-(S)-00213996

Other Documents

Description	Beginning Bates	Ending Bates
Initial Inventory, Schedule A and Schedule B Assets	BCI-EX-00099519	
Debtors' Adversary Complaint 11-16-2009		
Expert Report of John J. Schneider 3-15-2010		
Expert Report of Mark Zmijewski 3-15-2010		
The Trustee's Motion for Relief Pursuant to the Sale Orders or, Alternatively, for Certain Limited Relief Under Rule 60(b), (Bankr. S.D. N.Y. Sept. 15, 2009).		
Motion of Official Committee of Unsecured Creditors of Lehman Brothers Holdings Inc., et al., Pursuant to 11 U.S.C. § 105(a), Fed. R. Civ. P. 60(b), and Fed. R. Bankr. P. 9024, for Relief from Order Under 11 U.S.C. §§ 105(a), 363, and 365 and Federal Rules of Bankruptcy Procedure 2002, 6004 and 6006 Authorizing and Approving (A) Sale of Purchased Assets Free and Clear of Liens and Other Interests and (B) Assumption and Assignment of Executory Contracts and Unexpired Leases, Dated September 20, 2008 (and Related SIPA Sale Order) and Joinder in Debtors' and SIPA Trustee's Motions for an Order Under Rule 60(b) to Modify Sale Order. In re Lehman Brothers Holdings Inc., et al., Debtors Case No. 08-13555 (JMP) (Bankr. S.D. N.Y. Sept. 15, 2009).		
Report of Paul Pfleiderer, Volumes 1 & 2, 1-8-2010		
Review of Barclays JP Morgan Portfolio Price Testing Methodology and Framework	PwC-BarCapWP_00023595	
Review of Barclays Capital Price Testing Methodology and Framework for Lehman Acquired as of September 19, 2008	PwC-BarCapWP_00022935	
Summary of Barclays Desk Prices and Third Party Prices	IE5_JX9ESSE9PwC_BarCapWP_00022935	
Bid-Offer Reserve Agency CMOs	PwC-BarCapWP_00023327	

Documents that are Publicly Available

Bloomberg.com
WallStreetJournal.com

Other Documents Not Cited in the Record and Not Publicly Available

Bloomberg LP Data
Capital IQ Data
Interactive Data
ADCo
Polypaths Fixed Income System
Intex
Barclays Capital Live
Markit Group Limited
Morgan Stanley US Liquid Rates Tracker
Citigroup Capital Markets - Mortgage Key Issue Package MB275
Credit Suisse Mortgage Daily Report

Goldman Sachs Mortgage Strategies TBA Pass-Through Performance Summary - GS2006
Lehman Brothers Lehman Live - Pass Through Summary
Barclays Capital, Securitization Research, January 8, 2010
Bank of America RMBS Trading Desk Strategy, October 23, 2006
Formal Consultation Memo (PwC-BarCapWP_00000047)
PINE CCS, Ltd. Trustee Report - Measurement Date: 10/06/2008

Appendix III

Description of Dynamic Pricing of Agency RMBS and Related Model Components

74. The holder of a mortgage-backed security can be viewed as having a long position in a straight bond and a short position in an American call option. In this case, the American call option is the prepayment option embedded in the security that gives the homeowner the right to prepay all (prepayment) or some of their principal (curtailment) at any time prior to maturity.

75. Mortgage cash flows include scheduled and unscheduled principal payments (prepayments) and interest. Prepayments depend on the path of future interest rates and non-rate related factors. Path-dependent options, such as the prepayment option embedded in mortgage securities, are typically valued using a dynamic pricing approach via Monte Carlo simulation.

76. Mortgage pass-throughs and sequential CMO tranches are relatively straight-forward to value within the Option Adjusted Spread ("OAS") framework. IOs are securities that only pay investors interest cash flows. On the other hand, POs are securities that only pay investors principal cash flows. IOs and POs are labeled as either "Trust" securities if they are stripped from a mortgage pass-through or "Structured" securities if they are tranches within a CMO.

77. There are two general approaches that can be used to value MBS: static pricing and dynamic pricing. Static pricing assumes one future path of rates and one corresponding set of cash flows. The single set of cash flows is discounted using the London Interbank Offered Rate ("LIBOR") or U.S. Treasury rates plus a static spread.

A key disadvantage arising from this method is that the actual spread or yield earned by the investor can vary significantly due to future rate and cash flow uncertainty.

78. In the dynamic pricing framework, a large number of random rate paths and corresponding mortgage cash flows are generated. Each set of cash flows are discounted back to the present using underlying LIBOR rates. The model price is the average of the present value ("PV") of cash flows calculated for each random rate path. In order to equate the MBS price generated by the model (model price) to the MBS price observed in the marketplace (market price), a single interest rate spread is added to LIBOR. This spread is known as the OAS.

79. I used a dynamic pricing framework, i.e., an OAS approach, to value Agency MBS. The valuation framework is comprised of three major components: 1) the term structure model; 2) the current coupon model; 3) and the prepayment model. In the case of CMOs and structured product, a deal cash flow model is also utilized. A description of each component of the valuation framework follows.

Term Structure Model

80. An OAS approach to pricing MBS requires the use of a term structure model. A term structure model describes the progression of interest rates through time. The starting point for a term structure model is the initial term structure of interest rates, i.e., various maturity term points and zero coupon bond rates. The term structure is based on U.S. Treasury or LIBOR/Swap rates.

81. The LIBOR market model, also known as the BGM Model (Brace Gatarek Musiela Model), is a financial model of interest rates. The quantities that are modeled

are a set of forward rates that have the advantage of being directly observable in the market, with volatilities that are naturally linked to traded contracts.

Current Coupon Model

82. A term structure model is used to create a tree of LIBOR short rates or forward rate paths. However, mortgage prepayments are primarily driven by movements in the primary market mortgage rate, i.e., the current coupon rate. Therefore, a current coupon model is needed to derive prospective mortgage rates. The 30 year mortgage rate is customarily expressed as a premium over the 10 year U.S. Treasury or Swap/LIBOR rate. The ten year underlying rate can be derived from the term structure model.

83. One approach to modeling the mortgage rate is to assign a constant spread, i.e., interest rate premium, to the underlying rate or weighted average rate. More advanced modeling approaches take into account that the spread varies over time and/or as a function of rate volatility. Theoretically, the spread varies directly with the level of volatility, due to the fact that a portion of the spread reflects the cost of the prepayment option. Assuming a constant OAS, higher volatility increases the cost of the option and the mortgage rate. I used the OAS current coupon model, which is the more appropriate approach since it allows the spread to vary based on volatility.

Prepayment Model

84. The purpose of a prepayment model is to quantify prospective mortgage prepayments or curtailments. Prepayments can be voluntary or involuntary, as in the case of default. Prepayment models are a critical component of the OAS valuation

framework. Prepayment models must be able to capture the variation of prepayments on a given mortgage pool in different interest rate environments.

85. There are two general types of prepayment models: 1) Market-implied and 2) Econometric. The market-implied prepayment model is derived by holding the OAS constant and backing into the prepayment model that results in the observed MBS prices. The econometric prepayment model is derived by applying statistical techniques, e.g., multiple regression analysis, to actual historical prepayments (dependent variable) and known predictor variables. I used both a market implied and an econometric prepayment model in the MBS valuation process.

86. The econometric prepayment model I used for valuation purposes was the ADCo Model. Based on my own experience, I am aware of the substantial extent to which the ADCo model is used by market participants. The ADCo Model was developed by Andrew Davidson & Company, a highly-regarded firm that provides mortgage analytics solutions to the financial services industry.

Deal Cash Flow Model

87. The modeling and valuation of CMOs require the use of a deal cash flow model. The deal cash flow model includes the rules for how the mortgage principal and interest in a CMO will be disbursed to holders of various tranches. Each CMO is unique and may include numerous tranches with different levels of prepayment sensitivity. To value CMO tranches, I used the market standard Intex model as the Deal Cash Flow Model. Based on my own experience, I am aware of the substantial extent to which the Intex model is used by market participants.

Appendix IV

Valuation of Credit Sensitive Non-Agency RMBS

88. The first step in my valuation process was to quantify the timing and magnitude of prospective losses, which was done by first classifying the underlying loans in the pool according to current delinquency status, (e.g., current, 30 days past due, 60 days past due, etc.), and then applying "roll rates" to quantify the timing and number of future defaults, measured in dollar volume.

89. Next, I used average loss severity rates based on the underlying collateral's vintage, type, and payment characteristics [i.e., fixed vs. adjustable rate mortgages ("ARMs")] to translate defaults into future losses. Roll rates and loss severity rates were obtained from broker/dealer research reports which were available on September 19, 2008. After I derived a loss curve and deal-specific prepayment rates, I calculated each security's future cash flows using the Intex platform. Intex is widely accepted in the industry and commonly used for the valuation of non-Agency RMBS.

90. The next step in my valuation process was to derive an appropriate discount rate to apply to the security cash flows. I conducted a separate analysis of the discount rates implied by ABX indices for comparable non-Agency RMBS and used these implied rates to discount the cash flows in the Intex model. To be conservative, I applied an additional liquidity discount to derive my final values.

Exhibit D

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: LEHMAN BROTHERS HOLDINGS INC, et al., Debtor.	:	Chapter 11 Case No. 08-13555 (JMP) (Jointly Administered)
In re: LEHMAN BROTHERS INC., Debtor.	:	Case No. 08-01420 (JMP)

DECLARATION OF PAUL PFLEIDERER

I, PAUL PFLEIDERER, declare as follows:

1. I am the C.O.G. Miller Distinguished Professor of Finance at the Graduate School of Business of Stanford University, a Professor of Law (by courtesy) at Stanford Law School, Stanford Graduate School of Business Trust Faculty Fellow for 2009-2010, and Co-Director of the Wealth Management Executive Program at Stanford. I have been retained by Barclays Capital Inc. ("Barclays") as an expert in these cases. I base this Declaration on my personal knowledge and upon review of pertinent documents.

2. On January 8, 2010, I submitted my expert report in this matter, a document entitled the "Expert Report of Professor Paul Pfleiderer," which accurately sets forth my

opinions in this matter. On February 23, I provided deposition testimony. In response to questions from Counsel during that examination, I further elaborated upon my opinions and the extensive investigation and analysis that I performed, with assistance from staff at Finance Scholars Group ("FSG"), in the course of developing my opinions and preparing my report.

3. I understand that Debtor Lehman Brothers Holdings Inc., the Trustee for the SIPA Liquidation of Lehman Brothers Inc., and the Official Committee of Unsecured Creditors (collectively, the "Movants") have asked the Court to exclude my prospective testimony from the upcoming evidentiary hearing in this matter. Counsel for Barclays has asked me to review the Movants' Motion *In Limine* for an Order Excluding the Expert Testimony of Professor Paul Pfleiderer (the "Motion to Exclude" or "Motion") to ascertain whether the Motion properly characterizes my opinions, the bases for my opinions, and the work that I and others working at my direction performed as I developed my opinions and prepared my report.[1] Counsel for Barclays also asked me to examine whether Movants' experts based the opinions they expressed in their reports and depositions[2] on reliable data, whether Movants' experts employed sound principles and methods in their investigations, and whether Movants' experts applied such principles and methods in appropriate ways likely to generate reliable findings and conclusions. I was not asked to opine, and I do not opine, on any legal issues raised in the Motion to Exclude.

4. Upon review of the Movants' Motion to Exclude, I have determined that the Motion contains numerous erroneous and misleading assertions about my opinions, the bases for my opinions, and the work that I did or directed in the course of developing my opinions and preparing my report. Furthermore, the Motion (a) omits any reference to many analyses

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[1] Motion *In Limine* for an Order Excluding the Expert Testimony of Professor Paul Pfleiderer, *In re: Lehman Brothers Holding Inc., et al*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Apr. 2, 2010) (hereinafter "Motion to Exclude").

[2] Movants' expert John Olvany has not been deposed as of the date of this declaration.

summarized in my report that flatly contradict the Movants' assertion that my opinions lack rigor and reliability and (b) fails to cite testimony I gave at deposition that directly refutes many of the erroneous and misleading assertions contained in the Motion. As a result, the Motion fundamentally mischaracterizes my opinions, the bases for my opinions, and the work that I did or directed in the course of developing my opinions and preparing my report.

5. Movants claim that, instead of "conducting [my] own valuation of the Repo Collateral," I "merely accepted Barclays' valuation on faith."[3] They also claim that I conducted my work with "an utter lack of the independence essential to admissible expert testimony."[4] These statements are false, and they fundamentally mischaracterize how I approached this engagement and how I did my work. I did not accept Barclays' valuations on faith, but instead conducted a comprehensive, rigorous, detailed, and probing review, including investigation and analysis, both to "test" Barclays' valuations and to identify the most reliable basis for valuing the securities that transferred to Barclays in this transaction.

6. That my review, investigation, and analysis were comprehensive cannot be disputed. I personally examined and evaluated the full portfolios of positions that transferred to Barclays in both the initial inventory and in the JP Morgan Chase ("JPM") settlement inventory, as also did staff working at my direction. In many cases, we examined and evaluated individual positions (i.e., holdings in individual CUSIPs); in other cases, we examined and evaluated groups of positions in similar securities (e.g., Lehman equity-linked notes, municipal auction rate securities). While I did not conduct an *individualized* valuation of *every* CUSIP represented in the Repo Collateral, large portfolios of securities are seldom, if ever, valued on the basis of

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[3] Motion to Exclude at ¶ 13.

[4] Motion to Exclude at ¶ 18.

individualized valuations. Movants' own experts implicitly confirm that such individualized valuations are not necessary to address the valuation issues in this matter. As I discuss further below, with the exception of a relatively few "cherry-picked" CUSIPs, Movants' experts themselves do not perform individualized valuations, but instead purport to perform the same kind of "portfolio valuations" that I perform (though I believe they actually failed to do that properly, and instead simply second-guessed reasonable methodologies and judgments made at the time, in ways that inflate their valuations of the securities Barclays acquired).[5]

7. My investigative and analytical work in this case also was extensive, rigorous, and detailed. I personally spent many hours examining and analyzing many different aspects of Barclays' valuations, often on a line-by-line, CUSIP-by-CUSIP basis. Among other things, I examined and analyzed, for every class of securities, the extent to which Barclays relied on well-known sources of third-party data on prices and quotations; how Barclays used these data to estimate mid-point prices as of the valuation date; what method Barclays used to adjust mid-point prices to exit prices (as they were required to under the relevant accounting rules); and what kinds of data and analyses Barclays used to estimate the size of an appropriate "mid to bid" adjustment.[6] In many instances, I worked through and essentially replicated the methods

[5] Moreover, a close examination of the methods of the Movants' experts in the instances in which they do perform individualized valuations reveals numerous flaws and inconsistencies that in my opinion significantly bias their conclusions as to value. Their individualized valuations demonstrate exactly the problems I had in mind when I wrote in my report (at page 36) that "it is highly unlikely that such a procedure [developing entirely new marks, in litigation, more than a year after the events at issue] would lead to better marks than the marks developed by Barclays. Rather, such a procedure could in the end produce *less* reliable marks for several reasons."

[6] Movants' experts assert that Barclays' methods were flawed and inconsistent in numerous ways, that Barclays' independent auditor, PricewaterhouseCoopers, either did not find these flaws and inconsistencies or simply accepted them, and that I either did not find them or simply ignored them. In fact, most of what Movants' experts call flaws and inconsistencies are nothing of the sort. They typically are either (a) appropriate and justifiable differences in methods required by the varying quality and quantity of available information across different types of assets or (b) differences of opinion and judgment as to methods of the sort that typically arise between different analysts examining complex securities. This is demonstrated by the fact that Movants' experts' own valuation analyses themselves exhibit numerous "flaws and inconsistencies," many of which are far more problematic than the flaws

Barclays used on a CUSIP-by-CUSIP basis—again, for a sample of CUSIPs and not for every individual CUSIP—to make sure I had a complete and intimate understanding of Barclays' methods.[7]

8. My investigative and analytical work in this case was entirely independent and deeply probing. As a starting point, I personally read the transcripts of a large number of depositions of percipient witnesses, and staff working at my direction further scrutinized the transcripts of the depositions I read and of others for relevant information. While these depositions provided useful insight into many of the valuation issues at the center of this matter—especially the complexity of many of the securities that transferred over to Barclays, and the conditions in relevant financial markets at the time of the transfer—I and staff working at my direction requested the opportunity to interview, and in fact did interview, a long list of former Lehman and/or Barclays professionals with detailed knowledge of the securities at issue, the conditions in markets at the time of the transfer, valuation methods employed by both Lehman and Barclays in the normal course of business, the types and sources of data that Lehman and Barclays relied upon in valuing securities of the type at issue in this case, and similar topics.[8] Where I and my staff felt it would be helpful, we sometimes requested follow-up interviews,

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and inconsistencies these experts purport to have identified in Barclays' valuations. I provide examples of serious flaws and inconsistencies in the analyses conducted by Movants' experts below.

[7] As I stated in my deposition, I did not as a general matter "audit" the raw third-party data reported or referenced in Barclays's spreadsheets to ensure, for example, that data that Barclays identified as Markit data was in fact Markit data. In part, this was because, in working with Barclays' third-party data, I saw no indication whatsoever that any of the third-party data used by Barclays had been manipulated or misstated in any way. Furthermore, so far as I know, Movants have never asserted that the third-party data Barclays used was inaccurate in any way. In fact, when one of the Movants' experts (Dr. Zmijewski) searched for material differences between Barclays' data and the third-party source data, he found none. *See, e.g.*, Videotape Deposition of Mark Zmijewski, *In re: Lehman Brothers Holding Inc., et al*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Apr. 14, 2010), at 46:3-11, 83:14-24, 136:16-20 (hereinafter "Zmijewski Deposition") ("I looked at the Bloomberg prices and compared the Bloomberg last prices to Barclays and verified that they were reasonable representations of the Bloomberg last prices").

[8] Movants mistakenly assert that I chose not to interview Martin Kelly. In fact, staff working at my direction interviewed Mr. Kelly and reported back to me on the communication.

which were arranged as requested in every instance. In the course of these interviews, I and my staff were given access to trading desk managers, product control professionals, accounting personnel, and other senior executives, and we spent many hours asking probing and detailed questions without limitation or restriction. Examples of the kinds of topics we covered include the following: whether any of the Barclays professionals involved in valuing the Repo Collateral had any personal or institutional incentive to understate or overstate the values of these securities (they did not); the extent to which the methods used to value the Repo Collateral were consistent with valuation methods used by Barclays in the normal course of business (they were consistent); and the extent to which Barclays' valuation methods were subject to regulatory review (such reviews were rigorous and intensive). Of course, we also had access to and examined a very extensive set of documents, data, spreadsheets, and analyses related to (a) Barclays' valuation procedures and methods, and (b) the manner in which Barclays implemented such procedures and methods in valuing the inventory of trading securities it acquired from Lehman.

9. Any reasonable review and characterization of the work I did would find nothing like Movants' claim that I was "casual at best, . . . often assuming something was correct instead of verifying it, or relying solely on staff without bothering to learn or check the details of their work."[9] To the contrary, I personally spent many hours studying, examining, and testing different aspects of the matters about which I testified. I also spent many hours meeting with the senior professionals at Finance Scholars Group who were providing investigative and analytical support to me in the course of my work on this matter. We discussed all aspects of their support work in detail and at length, and I was regularly and fully apprised of the work they were doing at my direction.

[9] Motion to Exclude at ¶ 16.

10. Movants purport to support their assertion that my work was not sufficiently "independent" with a single quotation from my deposition, when I said, "it would be rather presumptuous for me to say that Barclays[,] who is marking this at the actual sale that they realized[,] is wrong."[10] This statement is taken out of context. In fact, as originally presented during my deposition, it relates to an important point of difference between my own professional judgments views and those of at least some of the Movants' experts. Most, if not all, of the valuation experts in this case (by which I mean Mssrs. Zmijewski, Schwaba, Olvany, Slattery, and myself) appear to agree that marks necessarily are estimates and that our objective as valuation analysts should be to identify, adopt, and implement procedures, methods, and data that are likely to produce unbiased estimates of value. In this regard, it is widely accepted by accounting and valuation professionals and in the relevant literature that a price observed in an actual transaction, when available, is an important piece of information that should be given considerable weight in reaching a value determination. At least two of Movants' experts reject this widely accepted general principle. Specifically, Professor Zmijewski contends that a valuation analyst should consider only transactions that occur before the valuation date, hour, and minute, and should ignore an observed price that occurs even *five minutes* after this cut-off.[11] I believe that is an insupportable view, and is simply wrong. Mr. Schwaba takes an even more extreme and unusual position, stating that he would reject an actual price from an actual transaction close in time to the valuation date simply for the sake of consistency.[12] In sharp contrast to Professor Zmijewski and Mr. Schwaba, I believe (as I said in my deposition) that it is

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[10] Motion to Exclude at ¶ 18 (citing the deposition of Paul Pfleiderer at 107:11 – 110:16).

[11] *See* Zmijewski Deposition at 56:3 – 57:16.

[12] *See* Deposition of Joseph Schwaba, *In re: Lehman Brothers Holding Inc., et al*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Apr. 12, 2010), at 50:17-23.

"presumptuous" of an analyst to reject a sale price from an actual transaction without good reason for doubting that that price was an accurate indicator of value at the time, and instead claim that his or her own models and assumptions provide a better indication of value than an actual transaction at the time.

11. Movants claim to demonstrate my supposed lack of independence by citing my review of a small group of securities identified as Lehman-issued warrants and Lehman-issued equity-linked notes — securities that depended for their value on Lehman's ability to pay the underlying obligations, which after the bankruptcy was obviously substantially impaired. Specifically, Movants cite my statement that, based on my analysis of the risk characteristics and likelihood of payment of these particular securities, "I certainly agree [with Barclays] that they should be significantly marked down. Whether you mark them down to zero or two cents [on the dollar] or five cents [on the dollar] is not something that I would offer an opinion about without doing more due diligence."[13] I stand by that statement and note two relevant facts: First, the total amount of value at issue here, for a price difference of two to five cents, for all of the Lehman equity-linked notes and all of the Lehman-issued warrants is at most approximately $10 million.[14] Second, Prof. Zmijewski, who purports to have performed a careful valuation of the equities in this case, does not contest Barclays' decision to write these securities down to zero. Thus, a valuation judgment on my part that Movants' Counsel claim illustrates my refusal "even to entertain that [any] Barclays' valuation was wrong" does not even merit a footnote in the

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[13] Motion to Exclude at ¶ 20 (citing the deposition of Paul Pfleiderer at 320:16 – 320:3).

[14] According to information presented in Barclays acquisition detail, two percent of the total Sept. 18, 2008 Bank of New York ("BoNY") valuation of untested Lehman-issued equity-linked notes and Lehman-issued warrants is $4.06 million, while five percent is $10.15 million.

report of Prof. Zmijewski (who was Movants' expert assigned to value the "equities" portfolio).[15]

12. Movants claim that I "did not, and could not, provide any analysis or opinion concerning Barclays' valuation of any specific CUSIP."[16] This is simply not true. In fact, I included an Appendix in my report in which I presented my analysis of and conclusions regarding the valuation of a broad variety of securities. As it happens, among the specific securities I analyzed were the Lehman-issued warrants and the Lehman equity-linked notes discussed above. Other specific securities I analyzed included certain high-risk varieties of collateralized mortgage obligations (namely, interest-only CMOs and inverse interest-only CMOs), Giants Stadium notes (which were auction rate securities), and certain insurance-related notes (also auction rate securities).

13. Another security that I analyzed individually in the course of preparing my report, with the assistance of FSG staff, was Pine CCS, a collateralized loan obligation ("CLO"). With respect to Pine, Movants assert that all I did "was review what Barclays had written about Pine in its own files [and] perhaps review Pine data on a Lehman database . . .."[17] They assert that I "did not speak with anyone at Barclays to determine what might be causing" the "disparity" perceived between the price Barclays determined for Pine and the price determined by custodian firm Bank of New York ("BoNY"). Movants further assert that I "did not review the terms of the Pine security" and "did not consider the creditworthiness of the credits underlying the CLO."[18] Here, as elsewhere, Movants are simply wrong. I or staff working at my direction had several

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[15] Motion to Exclude at ¶ 19.

[16] Motion to Exclude at ¶ 7.

[17] Motion to Exclude at ¶ 28.

[18] Motion to Exclude at ¶ 28.

conversations with the professionals at Barclays most knowledgeable about Pine, reviewed virtually all of the information that was publicly available about Pine or available in the extensive document production in this matter, evaluated the history and trading record for Pine CCS, and investigated the creditworthiness of the loans packaged in this CLO.

14. Movants correctly note that I attach significant weight to the fact that PricewaterhouseCoopers ("PwC") conducted a comprehensive audit of Barclays' 2008 financial statements that included an extensive, detailed, and thorough audit of the valuations and accounting decisions that went into the preparation of the acquisition balance sheet. They assert, however, that I "did not speak with anyone at PwC" when preparing my report.[19] This is true, as far as it goes. But what Movants do not acknowledge is that I and staff working at my direction confirmed the depth and thoroughness of PwC's audit with Barclays' accounting professionals and that we reviewed a large sample of documents developed in the course of this audit that support a conclusion that the PwC audit was careful and thorough.[20] Movants also note that in my deposition I could not confirm "whether PwC checked Barclays' prices for each CUSIP" in the inventory of trading assets that Barclays acquired from Lehman.[21] On this point, it is important to understand the specific data about which the deposing attorney was asking. In asking about "Barclays' prices" here, he was asking not about Barclays' marks, but about market data provided by well-known and highly-reputable vendors (such as Bloomberg, Standard & Poor's Capital IQ, and similar data providers) of the type routinely used and relied upon by both investment analysts and academic researchers. The deposing attorney's question was whether I

[19] Motion to Exclude at ¶ 27.

[20] Since the completion of my report, more PwC documents have become available to me, and those documents confirm the understanding that I had at the time I prepared my report.

[21] Motion to Exclude at ¶ 27.

had determined whether PwC had, in the course of its audit, checked each and every data point against the original source for that data. Of course, auditors typically do not fully authenticate or replicate every single data point on which their clients rely, but instead use sampling methods and materiality considerations to focus their efforts. Furthermore, in the course of my own work that involved the price data identified by Barclays as vendor data, I saw no evidence that these data were not what Barclays indicated they were, and have no reason to believe that PwC saw any such evidence either.[22] Thus, while I could not rule out that PwC had in fact verified and authenticated every single data point Barclays had pulled from a vendor, I was (and remain) unwilling to confirm that PwC had in fact checked Barclays' prices for every CUSIP.

15. At various points, Movants assert that I ignored relevant sources of information or otherwise exclude "pieces of evidence," that I discount deposition testimony, and that I chose not to talk to key people in the course of my investigation. None of these statements is accurate. In fact, I considered and analyzed all of the relevant information available to me. As a financial economist and valuation analyst, however, I did attach significant weight to hard data and numerical facts, and to the results of my analysis of these data and facts, especially where these helped to resolve or reconcile the sometimes conflicting and confused testimony and email traffic related to the issues I examined.

16. Finally, Movants claim that I "did not analyze the transaction that was disclosed to and approved by the Court."[23] This is false. I reviewed the documents that I understand constitute the agreement between the parties that was presented to the Court for approval, and I also read the transcript of the Sale Hearing on September 19, 2008. Furthermore, I studied the transaction as implemented in great detail. In my opinion, the "transaction that actually

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[22] Nor have any of the Movants' experts cited any such evidence, to the best of my knowledge.
[23] Motion to Exclude at ¶ 8.

occurred" (to use the Movants' phrase) was, in all essential respects, the transaction that was described in the key documents presented to the Court and in the presentation made to the Court in the Sale Hearing.[24]

17. Movants' experts assert that Barclays' methods were flawed and inconsistent in numerous ways. In fact, the "flaws and inconsistencies" that Movants claim to have identified are nothing of the sort. Rather, the "flaws and inconsistencies" claimed by the Movants relate to either (a) appropriate and justifiable differences in valuation methods for widely different kinds of securities, for which there was a varying quality and quantity of available information, or (b) differences of opinion and judgment as to the best methods for valuing illiquid securities – where Movants' experts are trying to second-guess the judgments Barclays made at the time in ways that inflate the valuations of the securities Barclays acquired (through methods that I believe are unreliable and unsupported).

18. As I now demonstrate through a non-exhaustive set of examples, Movants' experts' valuation analyses suffer from serious data issues and a number of outright methodological errors that are far more problematic than any of the supposed flaws and inconsistencies Movants purport to have identified in Barclays' analyses.

19. Professor Zmijewski is Movants' expert on the valuation of equities in the initial inventory and also on the valuation of all of the securities in the JPM inventory—which together constitute approximately 30% of the aggregate value of the Repo Collateral based on Barclays' marks. (Prof. Zmijewski also accumulates the valuation conclusions of Movants' other experts and offers an opinion as to the alleged aggregate or total overvaluation of the Repo Collateral. As I show below, Prof. Zmijewski did not sufficiently assess the reliability of the findings and

[24] Motion to Exclude at ¶ 8.

opinions of these other experts to justify his reliance on them.). It is important to note that, as is not disputed by the Movants' experts, the "equities" portfolio included many assets that were not publicly traded, liquid stocks; instead, it included many over-the-counter, thinly traded, or illiquid securities, including convertible debt securities. Thus, the valuation of this portfolio could not be done simply by looking up observable pricing data.

20. As an initial observation, it is significant and telling, in light of Movants' criticism of me for not valuing positions individually, that Prof. Zmijewski valued both the equities in the initial portfolio and the entire JPM inventory on a *portfolio basis*, not by individual valuation of each CUSIP. These were not insignificant components of the Repo Collateral: The equities valued by Prof. Zmijewski on a portfolio basis included 4,028 CUSIPs and had an aggregate value, at Barclays' marks, of $9.343 billion. The JPM inventory valued by Prof. Zmijewski on a portfolio basis included 1,195 CUSIPs and had an aggregate value, at Barclays' marks, of $3.740 billion.

21. More important, Professor Zmijewski's valuations of both the equities in the initial portfolio and the JPM portfolio are seriously flawed. With respect to the JPM inventory, Prof. Zmijewski relied on JPM marks for *September 17, 2008* (two days *before* his own preferred valuation date.) However, he did nothing to verify or check the reliability of the JPM marks as of that date.[25] Moreover, even if the JPM marks were reliable, which they are not, Prof.

[25] In this regard, Prof. Zmijewski relies on the opinion of Movants' expert, John Schneider, that JPM had the capability to value the Repo Collateral. However, Mr. Schneider did not study the composition of the Repo Collateral and did not know what specific securities were included in the Repo Collateral, and so had no basis for his opinion that JPM had the capability to value the Repo Collateral. *See* Deposition of John J. Schneider, *In re: Lehman Brothers Holding Inc., et al*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Apr. 12, 2010), at 33:12-25 ("Quoting Mr. Schneider's deposition testimony: "I've seen a list of assets, but I did not analyze it in any way. . . . I did not do anything other than see a list of assets." [Schneider transcript, 46:6-10] "Q: And you know nothing about what sort of collateral was actually in the Fed replacement repo; is that correct? A: Other than your question previously where I did look at a list of collateral.)

Zmijewski did not have JPM marks for his valuation date, which is September 19, 2008.[26] Prof. Zmijewski recognized that he had to adjust the September 17th JPM marks to September 19th, but the data he uses as the basis for this necessary adjustment is the Lehman GFS system for September 17, 2008, through September 19, 2008 — a time period when Lehman's President, Mr. McDade, and others have testified that the marks from the Lehman trading desks that fed into that system were not being updated comprehensively due to the fact that Lehman's traders and employees were not all actively working, due to the dislocation and uncertainty caused by the September 15 bankruptcy filing.[27] Indeed, the Lehman Examiner studied the GFS system and concluded that it was acceptably reliable through September 12, 2008, but was not reliable thereafter.[28] Thus, because his adjustment of JPM marks from September 17 to September 19 is flawed, the September 19 mid-point marks that are the starting point for Prof. Zmijewski's valuation of $3.74 billion of securities in the Repo Collateral are unreliable. Moreover, to the extent that securities prices generally were falling during the week of September 15, 2008, the GFS system failed to capture the full extent of the decline; this means that the error in Prof.

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[26] To be clear, I disagree with Movants' experts' use of a September 19, 2008 valuation date — that is, a full three days before the Sale Transaction closed and title to the assets passed to Barclays — which substantially inflates their valuations. In my view, Barclays' use of of September 22 and, to the extent relevant, dates during the following week (selected in consultation with its auditors at PwC) is more appropriate. The use of a December 22 valuation date for cash and securities ultimately received from JPMorgan was also, in my opinion, a more reasonable estimate of the fair value of Barclays claim as at September 22 than using September 19 values of those assets.

[27] To support his claim that GFS data provide a suitable basis for adjusting the September 17 JPM marks to September 19, Prof. Zmijewski cites a table in his report showing the percentage of GFS prices that changed one or more days during the span from September 12 through September 19. (A high percentage of the GFS prices change once or twice or even three times during this span.) But the relevant question is whether GFS prices changed between September 17 and September 19 (which they often do not); Prof. Zmijewski does not report data for this particular time period. In fact, it is likely, based on my analysis of daily GFS reports on the relevant days, that the changes Prof. Zmijewski cites for his five-trading-day span in fact occur mostly early in that span and not between September 17 and September 19.

[28] *See, e.g.*, Report of Anton R. Valukas, Examiner, *In re: Lehman Brothers Holding Inc., et al*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Mar. 11, 2010), at 1595-1596, 1604, 2007-2010.

Zmijewski's mid-to-bid adjustment method and data clearly bias his valuations in favor of Movants, i.e., towards artificially higher valuations compared to Barclays' marks.

22. Movants' expert Joseph Schwaba examined and claims to have independently valued a small subset of the more than 500 municipal securities that Barclays acquired from Lehman. Mr. Schwaba states that 20 of the 26 municipal securities that he examined were auction-rate securities, a subclass of municipal securities that was particularly troubled in 2008—indeed, many analysts described the market for these securities as "frozen" during much of 2008, and the market remains dormant, at best, today. Despite this, Mr. Schwaba valued the auction rate securities he examined either *very close to, at, or above par*. This is inconsistent with his own observation in his report that "[f]ailed [auction-rate securities] would trade below par and may be subject to restricted liquidity."

23. Mr. Schwaba's method for valuing the auction rate securities he examined was flawed, unreliable, and biased in favor of Movants, i.e., designed to generate high values for securities that were not trading or tradable in September 2008. Specifically, his valuation method did not take into account the fact that he was valuing auction-rate securities that had failed at auction, often continuously for months. At his deposition, Mr. Schwaba could not recall ever having previously traded or valued auction rate securities; indeed, his experience with municipal securities generally has been extremely limited.

24. Mr. Schwaba's lack of experience with or understanding of auction rate securities led him to adopt a fundamentally unsound approach to valuing these securities. Specifically, he based his valuations of the auction rate securities he examined on 152 transactions involving supposedly "comparable" securities, all of which traded at or very near par. But Mr. Schwaba was unable to identify which of his comparable securities were auction-rate securities and had no

idea which, if any, were failed auction-rate securities.[29] As a result, in selecting the comparables that he used to value failed auction-rate securities, Mr. Schwaba failed to check whether his comparables had the one characteristic essential to establishing comparability, namely, whether they were auction-rate securities with a similar auction history. This is the equivalent of valuing houses adjacent to toxic waste sites with "comparables" that are adjacent to other municipal properties—parks, golf courses, schools, and the like. Needless to say, the resulting valuations are unreliable and biased upwards. Mr. Schwaba's failure to take into account such an important factor in the valuation of auction-rate securities renders his testimony on this issue unreliable.

25. Movants' expert Mark E. Slattery claims that he "calculated the fair value of a total of 6,667 securities acquired by Barclays in the Acquisition."[30] These securities fall into six different asset classes: U.S. Treasury and agency debt securities; agency residential mortgage-backed securities ("RMBS"); non-agency RMBS; collateralized loan obligations ("CLOs"), including the Pine CCS CLO, collateralized debt obligations ("CDOs"); and commercial mortgage backed securities ("CMBS").

26. One major difference between Mr. Slattery's valuations and Barclays' valuations is the method used to adjust mid-prices to bid or exit prices for certain classes of assets. Mr. Slattery agreed that such an adjustment was appropriate, but contends that the adjustments used by the Barclays valuation personnel were too large. As an alternative to Barclays' mid-to-bid adjustments, Mr. Slattery constructs his own mid-to-bid adjustments in an unorthodox way using data that are outdated, do not reflect of the market conditions prevailing in September 2008, and

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[29] Even if any of the transactions that Mr. Schwaba used as comparables actually involved a failed auction-rate security, that would still not make it a valid indicator of the value of the failed auction-rate securities that he was valuing because Mr. Schwaba also made no effort to screen out non-arm's length transactions in which financial institutions repurchased failed auction-rate securities from their own retail customers for relationship reasons or in response to regulatory or litigation pressure. Such a non-arm's length transactions in one failed auction-rate security provides little information about what a different failed auction-rate security would have traded for in an arm's-length transaction.

[30] Expert report of Mark Slattery, paragraph 5.

whose reliability is not known and cannot be tested. So far as I am aware, Mr. Slattery's technique has never been used in the relevant academic literature and has never been endorsed by any other valuation professional; moreover, Mr. Slattery was unable to cite any use of this technique in the academic literature or any support for his approach by any standard setting organization of valuation professionals.

27. Mr. Slattery's approach was to attempt to derive a mid-to-bid adjustment that reflects the degree of illiquidity prevailing in September 2008 in the markets for the fixed-income securities he examined. As a first step, he attempts to calculate a "multiplier" that captures the relationship between bid-ask spreads in a "typical" market to bid-ask spreads in a "distressed" market. To estimate that multiplier, Mr. Slattery uses information from a chapter entitled "A User's Guide to Buy-Side Bond Trading," contained in 1997 book on bond portfolio management. Exhibit 1 in that chapter reports what the author describes as "indicators of market liquidity for a cross-section of the fixed-income universe." However, the information Mr. Slattery relies on is not verifiable data, but rather "Salomon Brothers, Lehman Brothers, and Sanford C. Bernstein estimates." Beyond this reference, the article does not specify when the estimates were gathered (although it must have been at least 13 years ago) or what market conditions were deemed by the author or those providing the estimates to be "typical" and "distressed." Whatever "distressed" market conditions were deemed to be in 1997, it is highly unlikely that the phrase brought to mind conditions in any way comparable to the tumultuous market conditions that prevailed in September 2008. Nonetheless, Mr. Slattery computed his multiplier by dividing the "distressed" discount for a given class of securities by the "typical" discount for that same class.[31] In sum, Mr. Slattery's distressed-to-typical multipliers are based on vaguely-sourced and out-of-date estimates of bid-ask spreads that prevailed during unknown

[31] For example, a "typical" spread of 0.5% and a "distressed" spread of 1.5% would produce a multiplier of 3.

time periods, under ill-defined conditions which are not comparable to the conditions that prevailed in September 2008 (or least whose comparability cannot be reliably determined).

28. Mr. Slattery's second step is to use his multipliers to convert "typical" bid-ask spreads to "distressed" bid-ask spreads. Here, too, Mr. Slattery's technique was flawed, because the sources of his "typical" bid-ask spreads were likewise out of date. For Treasury and agency securities, Mr. Slattery relied on data about liquidity discounts during the period from 1992 through 2002. For residential mortgage-backed securities, he used figures that one of his support staff had gathered in some unspecified fashion while employed at Bank of America in *2001*. Mr. Slattery did not properly test, and has no way of knowing, whether this stale bid-ask data was an appropriate starting point for computing bid-ask spreads that prevailed in *mid-2008*. Thus, both components of Mr. Slattery's novel "technique" are flawed. As a result, his calculations are fundamentally unreliable and do not provide a sound basis for adjusting mid-point marks to bid prices.

29. As I established in my report in this matter, Barclays' valuations were developed not for litigation purposes, but in the normal course of business over several months following the transaction, primarily for the purpose of preparing financial statements to meet stringent filing requirements in accordance with government regulations. Barclays' personnel gathered the kinds of information that they typically relied on and applied valuation methods that they typically relied on in the normal course of business, and the data Barclays relied on, the valuation methods Barclays employed, and conclusions as to value Barclays reached all were tested and accepted by PricewaterhouseCoopers.

30. As I said in my report, "I also considered the feasibility of developing an entirely new set of marks, completely independent of any of the available sources. I determined that it is

highly unlikely that such a procedure would lead to better marks than the marks developed by Barclays. Rather, such a procedure could in the end produce *less* reliable marks . . ."[32] The many flaws in the work of Movants' experts and the defects in the marks they developed show that the concerns I expressed were well founded and justified.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Palo Alto, California on April 19, 2010.

Paul Pfleiderer

Exhibit E

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

Chapter 11

LEHMAN BROTHERS — Case No. 08-13555(JMP)

HOLDINGS, INC., et al., — (Jointly Administered)

Debtors.

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VIDEOTAPED DEPOSITION OF MARK SLATTERY

New York, New York

April 16, 2010

Reported by:

KATHY S. KLEPFER, RMR, RPR, CRR, CLR

JOB NO. 29654

April 16, 2010

Videotaped deposition of MARK SLATTERY, held at the law offices of Boies Schiller & Flexner, LLP, 575 Lexington Avenue, New York, New York, before Kathy S. Klepfer, a Registered Professional Reporter, Registered Merit Reporter, Certified Realtime Reporter, Certified Livenote Reporter, and Notary Public of the State of New York.

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ALSO PRESENT:
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MATTHEW SMITH, Legal Video Specialist

M. Slattery

THE VIDEOGRAPHER: This begins tape labeled number 1 of the videotaped deposition of Mark Slattery in the matter of In re Lehman Brothers Holdings, Incorporated, et al. in the United States Bankruptcy Court, Southern District of New York, Case Number 08-13555. This deposition is being held at 575 Lexington Avenue, in New York, New York, on April 16, 2010 at approximately 9:32 A.M.

My name is Matthew Smith for TSG Reporting, Incorporated and I am the legal video specialist. The court reporter is Kathy Klepfer, in association with TSG Reporting.

Will counsel please introduce yourself for the record.

MR. SHAW: Jonathan Shaw, Boies, Schiller & Flexner, on behalf of Barclays Capital, Inc.

MR. TAMBE: Jay Tambe from Jones Day on behalf of the Debtor, Lehman Brothers Holdings, Inc. I will be joined later today by my colleague Xochitl Strohbehn. She

M. Slattery

should be here shortly.

MS. URBIETA: Olga Urbieta on behalf of Quinn Emanuel and the Unsecured Creditors Committee.

MR. SHAW: And I have with me Elizabeth Davis of Finance Scholars Group.

THE VIDEOGRAPHER: And will the court reporter please swear in the witness.

* * *

MARK SLATTERY, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY MR. SHAW:

Q. Sir, would you please state your name for the record?

A. My name is Mark Slattery.

Q. Mr. Slattery, have you ever been deposed before?

A. No.

Q. Okay. Let me then spend a couple minutes just explaining what will happen and the like.

M. Slattery

I will ask you questions. If at any point you don't understand my question, just let me know and I will try and do a better job of phrasing it.

If at any point today you want to take a break, let me know, and I may ask you to answer one or two more questions just because I'm on a particular line, but we'll take a break.

Have you ever served as an expert witness before?

A. No.

Q. When were you retained to work on this matter?

A. Beginning of this year, so January 2010.

Q. Who approached you about serving as an expert on this matter?

A. Nick Weir contacted me.

Q. And Mr. Weir is at what used to be Chicago Partners, now Navigant?

A. I believe he's a principal of Chicago Partners and which I believe is being rebranded as Navigant Economics.

M. Slattery

Q. Had you ever previously worked with Mr. Weir or any of his colleagues at Chicago Partners?

A. I've worked with Mr. Weir in the past.

Q. In what context did you work with Mr. Weir in the past?

A. I spent approximately two years at Coopers & Lybrand in the early '90s, and during that time I spent part of my tenure there with Nick Weir working on his behalf.

Q. What were you doing before you joined or before you were retained to work on this matter?

A. Immediately prior?

Q. Yes.

A. I was with Flagstar Bank out of Detroit, Michigan.

Q. And in what capacity were you with Flagstar Bank?

A. My responsibilities were twofold: I acted as a consultant within a Capital Markets Group to help provide expertise as it relates to the asset/liability management work that was part of their domain, and also, I was

M. Slattery

responsible for enhancing the mortgage servicing rights valuation framework at Flagstar Bank.

Q. What do you mean by the mortgage servicing rights valuation framework?

A. Flagstar had at the time, during my approximate one year there, a mortgage servicing rights portfolio that totaled about 52 billion of unpaid principal balance. They were valuing it using two different applications. I was asked to offer recommendations, suggestions, identify any inherent weaknesses in the process that they used to value this particular asset.

Q. Who are you currently employed by?

A. I am an independent contractor currently being retained by Navigant Economics.

Q. Is this the only matter in which you are doing work with Navigant Economics?

A. Yes.

Q. When you were contacted in January of this year, what did you understand your assignment to be?

A. Let me back up. I was contacted in late November. I started with Navigant in January.

M. Slattery

Q. Did you do any work between late November and your start in early January?

A. I was still with Flagstar Bank.

Q. So the answer is no, you did not do any work on this project prior to joining Navigant in January?

A. Correct.

Q. And what did you understand your assignment to be?

A. I was asked to value mortgage securities, but also, I was asked to, if possible, to put together a valuation team specifically designed to value mortgage-backed securities.

Q. And who were the members of that team?

A. The team members in Chicago include a gentleman by the name of Roderick Powell and also Jeff Dykstra.

There's one other colleague that was not part of specifically the valuation team but included as part of our resources for running down information off of applications such as Bloomberg.

Q. And that's an employee of Chicago

M. Slattery

Partners who's been --

A. I believe he's also an independent contractor, but he was not part of the team that I compiled.

Q. And what is that person's name?

A. Lincoln Baker.

Q. What is Mr. Powell's background?

A. His background includes time at Bank of America. I'm not sure whether it was Nations Bank when he was there, but it goes back a number of years. He also was, I believe, with an equity entity or equity shop for a period of time. I also spent time with him earlier this decade at LaSalle Bank, so he worked with a group that I was part of at LaSalle Bank.

Q. And has Mr. Powell ever traded any sort of securities?

MR. TAMBE: Object to the form of that question.

You can answer.

Q. Other than on his own account, for example?

A. I don't know the answer to that question.

M. Slattery

Q. Does Mr. Powell have a background in valuing securities?

A. Yes, he does.

Q. And what is his background in valuing securities?

A. At Bank of America, he spent his time with I believe an Enterprise Risk Management Group. He worked for a particular part of Bank of America or group within Bank of America that was specifically chartered with the valuation analytics that supported the trading activity as well as the balance sheet management activities of Bank of America. So he was part of an Enterprise Risk Group.

Q. Did he have at any point in his career, to your knowledge, responsibility for actually affixing marks to particular securities?

MR. TAMBE: Object to the form of that question.

You can answer.

A. I don't know the answer to that question.

Q. Who is the other gentleman you added

M. Slattery

to the team? I just don't recall the name.

A. Jeff Dykstra.

Q. What is Mr. Dykstra's background, sir?

A. He was, as far as I understand, he started his career at Flagstar Bank. I then hired him to be part of my team at LaSalle Bank earlier this year, and then after LaSalle, I believe he went to an energy trading firm. I don't know how long he stayed at that particular firm.

Q. Has he ever been a trader of securities other than for his own account?

MR. TAMBE: Object to the form.

A. I don't know the answer to that question.

Q. Has he ever had responsibility for valuation of securities?

A. Yes.

Q. And tell me about that, please.

A. At LaSalle Bank, I co-chaired a group known as the Mortgage Advisory Council. Our responsibilities were -- included valuing securities and providing the most robust valuation framework for mortgage assets and

M. Slattery

mortgage-related lines of businesses at the bank. Jeff was part of that effort.

Q. Did he have any particular line of responsibility there for any particular type of securities?

A. Not a particular type. It ran the gambit from whole loan unsecuritized mortgages to securitized mortgages.

Q. Were there any non-mortgage securities that he worked on valuing there?

MR. TAMBE: Objection to form.

A. We also were asked to value indeterminate deposits, so we looked at the other side of the balance sheet, if you will, so we looked at liabilities of the bank.

Q. Have you yourself in your career ever traded any -- any form of securities other than for your own account?

A. Traded securities, no. I did spend time as an investor of non-agency residential mortgage-backed securities, yes. I'm not a trader per se.

Q. When was that?

A. From 2006 to approximately 2008.

M. Slattery

Q. Tell me about your responsibilities and role in that position.

A. I provided the analytics underlying the security selection. Another gentleman, through his relationship with various investors, made the decisions as it related to the actual securities that were purchased to be part of a portfolio.

Q. And you said that was from roughly 2006 through some point in 2008; is that correct?

A. Approximately, yes.

Q. When in 2008 did that engagement or did you stop having that responsibility?

A. The end of November 2008.

Q. And that was with which institution?

A. It was a group by the known -- known by the name of JMN Financial.

Q. And what did JMN Financial do?

A. As far as my understanding of the related lines or the lines of business at JMN, there were mortgage funds, non-discretionary mortgage funds, which meant that we attracted investors to work with them to create mortgage

M. Slattery

funds, funds dedicated to mortgage investments.

The other line of business that I was directly involved in was a consulting line of business, so I provided various -- I participated in a variety of consulting engagements while with JMN.

Q. Did JMN trade securities on its own account?

MR. TAMBE: Objection to the form of the question.

A. Not that I'm aware. I don't know.

Q. Did JMN trade securities on behalf of customers?

A. I think trade, in my opinion, unless I'm misinterpreting the question, would represent an active purchase and sale of said securities that -- securities that were purchased were more for a portfolio, so it was more of a build-out approach.

To my knowledge, none of the securities that were purchased were sold within the context of the funds that were created.

Q. So if I'm understanding your answer correctly, this portfolio that JMN ran would

M. Slattery

invest in mortgage securities and hold them, is that basically correct?

A. Yes. And during my time there, there were two such funds.

Q. Okay. So there were two separate funds. How did they differ, if at all?

A. Just from the standpoint of the investor.

Q. Did either of the funds, to your knowledge, purchase or sell mortgage securities in September of 2008?

A. There was a fund that was active in the sense that there were securities, and the second fund, I don't recall if there were actual securities that were purchased during September 2008. However, we actively monitored the securities that were in the portfolio on a frequent basis, including September 2008.

Q. What do you mean by you actively monitored the securities that were in the portfolio?

A. Well, the securities -- there is a monthly cash flow, and with that cash flow there's typically reports that come out as it

M. Slattery

relates to the performance of the security and the underlying collateral. So myself and another analyst, if you will, we actively managed the information flow and dissected it, the CD impact or try to quantify the impact on holdings in the particular portfolio.

Q. What was the size of the portfolio that was active?

A. As of September 2008?

Q. In September 2008.

MR. TAMBE: Objection to the form of the question.

You can answer.

A. I'm sorry, as of September 2008?

Q. As of September 2008, yes, sir.

A. Based on my recollection, I believe that it was approximately $80 million in principal.

Q. Why did you leave JMN -- I'm sorry, I forget the rest of the name of the entity.

A. The second investor, which supported and provided the capital for the second fund, decided to end his relationship with JMN.

Q. Why did that person decide to end its

M. Slattery

relationship with JMN, do you know?

A. I don't know exactly, no.

Q. Is JMN still solvent?

MR. TAMBE: Objection to form.

A. I don't know.

Q. You were with Flagstar Bank at what period of time?

A. March of 2009 through the end of 2009, approximately ten months.

Q. And you were -- and your position there was what?

A. I believe my title was First Vice President, and again, I had two areas of responsibilities.

Q. What were those two areas?

A. Act as an internal consultant for the asset/liability management efforts of the Capital Markets Group of which I was a part, and also review the mortgage servicing rights portfolio valuation framework.

Q. And why did you leave Flagstar Bank?

A. I'm sorry, when or why?

Q. Why?

A. Why? The opportunity that Navigant

M. Slattery

Economics/Chicago Partners presented allowed me to stay in Chicago. With Flagstar, I was commuting back and forth to Detroit.

Q. How many hours have you worked on this matter?

A. I don't know the exact number.

Q. Rough estimate?

A. 700 hours.

Q. So basically it's been what you've done full-time for two months?

A. Close to --

Q. Or three months, I guess?

A. Right. Maybe more like 12 weeks, whatever it's been since the beginning of the year.

Q. Apart from the work that you've done in this case, have you ever had responsibility for valuing Treasury and agency debt securities?

A. Yes, as -- yes.

Q. In what capacity?

A. My last three years at the Federal Home Loan Bank, which takes us back to the late '80s and the beginning early '90s, I was one of two senior financial analysts that was charged

M. Slattery

with the valuation and ongoing monitoring of the bank's investment portfolio, including Treasury and agency debt.

Q. Any other such experience throughout your career?

A. I have valued securities throughout my career almost at every stop, and that would include Treasuries, U.S. agency debt securities, residential mortgage-backed securities, whole loans, more complicated instruments as well.

Q. Would it be fair to say that in September 2008, apart from whatever monitoring you were doing in connection with this still extant portfolio at JMN, you were not actively involved in the -- in the market?

MR. TAMBE: Objection to the form of the question.

A. I would disagree with that.

Q. Okay. Tell me how you were actively involved in the market at the time.

A. We were responsible for a sizable multi-million-dollar position. As a result, we would be remiss in our duties as analysts, as assistant portfolio managers if we did not

M. Slattery
maintain an active awareness of the marketplace, September 2008, March 2008, whatever.
Q. Okay. What did you do to maintain an active awareness of the marketplace in September 2008?
A. On a daily basis we were examining, reviewing opportunities for additional placement of capital. We were again managing and measuring the portfolio that we had in place at the time, looking at the overall tone of the marketplace, et cetera.
Q. What can you tell me about your understanding of -- first of all, let's start with general market conditions in September of 2008.
MR. TAMBE: Objection to the form of the question.
MS. HASSAN: Same objection.
Q. You can answer.
A. In a general way, the market conditions represented potential for stress, reflected stress in the marketplace.
Q. What was the market for CLOs like in September of 2008?

M. Slattery
MR. TAMBE: Objection to the form of the question.
A. The CLO market at the time, based on my work in this engagement, is -- I would suggest that the CLO market, because of the complications of the instruments, maybe took on a degree of stress, and they were part of that stress.
Q. And when you say "a degree of stress," what do you mean?
A. The market, I believe, was concerned about performance based on my understanding, and I think the more complicated the instrument the greater the potential for placement of stress.
Q. And when you say "placement of stress," what do you mean?
A. The CLO market may have reflected less liquidity than the other less complicated segments of the fixed income market.
Q. Did other segments of the fixed income market also reflect stress at this time?
MR. TAMBE: Objection to form of the question.
Q. Or, rather, at that time?

M. Slattery
MR. TAMBE: Objection to the form of the question.
A. Certain segments may have reflected more stress than others.
Q. And which segments do you believe reflected more stress than others at that time?
A. The more complicated the structure the more likely that the market was stressed.
Q. I take it from your answer that, from your earlier answer about your knowledge of the CLO market, that the knowledge that you have comes from studies you have done since you began working on this project in January, is that fair?
A. I would not completely agree to the extent that I had an extensive experience with the CDO market. At the end of the day, the collateralized debt obligation versus the collateralized loan obligation market are very similar but for specifics as it relates to the underlying collateral, but the dimensions of the structures and the way in which one would go about valuing those instruments are on par with one another to a great extent.

M. Slattery
Q. And in September of 2008 what work were you doing in terms of valuing CDOs?
A. As part of my work at JMN, we were engaged by an investment syndicate, I believe is the way to represent the firm, out of New York and they were asking us to look at a CDO portfolio.
Q. And how large was that portfolio?
A. Hundreds, if my memory is accurate, hundreds of CDOs.
Q. And in terms of dollar value, how large was that portfolio?
A. Based on my recollection, I believe that the position represented, in aggregate, 4 billion.
Q. What can you tell me about the prevailing bid-offer spreads in the fixed income securities market in September of 2008?
MR. TAMBE: Objection to the form of the question.
A. Which particular market? Which particular segment of the market?
Q. CLOs we'll start with.
MR. TAMBE: Objection to the form of

M. Slattery

the question.

A. I don't know the bid-ask spread dimension for CLOs at that time.

Q. What about Treasuries?

A. Treasuries, based on empirical research, it looked as though the bid-ask spread was behaving consistent with historical levels; in other words, it was somewhere between 1 and 2/32s.

Q. What about for agency securities?

A. Agency securities, again, based on observations, they were trading from a bid-ask perspective a little bit to the upside relative to normal, but not in any way, shape or form to the extreme levels. In other words, based on research, the bid-ask spread for the U.S. agency debt market would trade in the 4 to 10 tick, 4/32 to 10/32 level. Based on tracking five specific securities from August, September and October of 2008, it did not look as though that they deviated significantly from those levels.

Q. What research are you referring to when you say "based on research"?

A. We examined five securities within

M. Slattery

the, in great detail, of the 125 U.S. Treasury and agency debt securities that we valued, and we tracked them on a daily basis from August through October of 2008.

Q. And which five securities were those?

A. I'd have to go back to my spreadsheet. I believe it was a mix of a Freddie Mac security, a Federal Home Loan Bank security, a Federal Farm Credit Bureau security, a TVA security, and I'm not sure if my memory serves me in terms of the fifth.

Q. And apart from tracking these five securities, was there any other research that you did on this issue?

A. Yes.

MR. TAMBE: Objection to the form of the question.

You can answer.

Q. And what was that research?

A. We started evaluating the liquidity issue for the U.S. Treasury and agency debt securities by doing research that put us prior to 2008. We obtained information out of a resource, which I believe is highlighted in the

M. Slattery

report, Fabozzi, Frank Fabozzi, who is a market presence.

We used one of the citations from a book, one of his several books on liquidity for U.S. Treasury and agency debt securities, and then we used a normal versus stressed approach for the agency debt securities to identify liquidity adjustments on a maturity-specific basis as opposed to a flat percentage basis.

(Exhibit 710B, a document bearing Bates Nos. LEH-NAVIGANT 026434 through 026436, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 710B, and I apologize for the odd way that it's been printed out with two words appearing on the first page and nothing appearing on the second. Can you tell me what this document is?

MR. TAMBE: Objection to the form of the question. I just, I don't know where it comes from and the printing problem because the words on the last page are cut off. So it's apparently from a spreadsheet of some

M. Slattery

type, but --

MR. SHAW: It's from his production. A spreadsheet with Lehman-Navigant 026434.

MR. TAMBE: Okay. Was it printed in this format or was it provided in native?

MR. SHAW: I believe it was in native.

MR. TAMBE: Okay. I'll just have an objection to the extent, when you transferred it from native to print, if anything is lost. Okay.

Go ahead.

BY MR. SHAW:

Q. Can you tell me what this document is, sir?

A. This represents the work that we performed in order to quantify bid-ask spread adjustments for distressed purposes for agency debt securities.

Q. And this is the Fabozzi document you mentioned earlier?

MR. TAMBE: Objection to form.

Q. Fabozzi data, rather, that you mentioned earlier?

MR. TAMBE: Objection to form.

M. Slattery

A. The Fabozzi information is at the top that creates for the normal versus distressed and it allows us to identify or quantify a multiple.

Q. And was Mr. Fabozzi himself the source of this information?

A. To the best of my knowledge, I believe he surveyed traders during this time to identify these normal versus distressed.

Q. And when you say "during this time," what time period are you talking about?

A. I believe 1997.

Q. Did you do anything -- do you know how the terms "normal" and "distressed" are defined for this purpose?

A. No, I do not.

Q. Is the multiple in the third column we see there something that Mr. Fabozzi provided or something that you calculated?

A. We calculated that number.

Q. Can you tell me how you calculated that number?

A. I believe it's the distressed number divided by the normal number.

M. Slattery

Q. How were you defining "distressed" when you made use of these, these numbers?

A. Distressed would be an example of a market period where the bid-ask spreads widen to reflect additional demand in the marketplace from a stress standpoint.

Q. And this is data you believe from 1997?

A. Yes.

Q. Are you sure about that?

A. To the best of my knowledge.

Q. And you believe this is data provided by Frank Fabozzi?

A. It's in his book. I believe, again, that the source, I believe, is from surveys with traders.

Q. And this would have concerned conditions, obviously, as you say, in 1997.

Did you make any effort to determine whether bid-ask spreads that were prevailing in 1997, or whenever this data was gathered, were still prevailing in September of 2008?

A. We did. Like I said, we evaluated a segment of the securities specifically on a

M. Slattery

daily basis in 2008 and related those findings to these to see if there was a reconciliation or calibration.

Q. And that's you looked at five securities; is that correct?

A. In detail, yes.

Q. Was that work produced to us, do you know, as part of your work papers?

A. I'm not aware.

MR. TAMBE: Objection to the form of the question.

Q. Was that recorded anywhere, the work that you did in tracking those five securities?

A. Yes.

MR. SHAW: If that hasn't been produced to us, I would appreciate your doing so; and if it has been, I would appreciate you identifying it when you get a chance.

MR. TAMBE: We'll take a look at it and we'll also take a look at the stipulation we have on expert materials.

Q. What do you mean by on-the-run Treasuries?

M. Slattery

A. Recently issued.

Q. And what are off-the-run Treasuries?

A. Those that reflect a certain amount of seasoning in the marketplace.

Q. How much seasoning?

A. It depends. The on-the-run Treasury market reflects a variety of -- a variety of tenors, varying maturity points.

Q. In the work that you did by looking at those five securities to test whether the Fabozzi numbers were still valid and reliable, tell me how you went about testing that.

A. The Fabozzi article again provides us with a multiple for distressed estimation. We evaluated the securities on a daily basis in terms of their price and yield performance in the market to identify if there was any significant deviation from any of the stress indicators that we have on this sheet.

Q. Did you do any statistical testing to determine the validity and robustness of your results?

A. Not specifically, no.

Q. Did you do it in any non-specific

manner?

A. What did you mean by "statistically" then?

Q. Did you do any statistical testing of the results of your examination of those five securities?

MR. TAMBE: Object to the form.

A. We mathematically calculated performance of the instruments under extensive detailed consideration and reconciled those results to this information.

Q. And what I'm asking you is, in the course of doing that math, did you do any statistical testing to determine the robustness of the results you were coming up with?

MR. TAMBE: Objection to the form.

A. Again, we evaluated things mathematically, if I'm misinterpreting the statistical implication or the implication of the statistical element of your question, but we definitely mathematically evaluated them on a daily change basis and compared the price and yield performance to this specific set of data points.

Q. And what mathematical evaluation did you do?

A. Variants. We used variants.

Q. And what do you mean by you used variants?

A. We calculated the change on a daily basis.

Q. With respect to the five securities that you looked at relative to historical levels, were the spreads widening or narrowing on those securities throughout the period of -- the period that you examined them?

MR. TAMBE: Objection to the form of the question.

A. From beginning to end, or particular like period within the three months?

Q. Tell me, did you observe any trends of widening and narrowing?

A. The market moved up and down during that period. So, yes, there was movement up and down with respect to price and, correspondingly, yield.

Q. Were the five securities that you examined on- or off-the-run securities?

A. They were U.S. agency debt securities, so they were not -- in terms I would not describe them as off-the-run Treasuries in that sense or on-the-run Treasuries.

Q. So they weren't Treasuries at all?

A. Correct.

Q. And I take it none of them were corporates either?

A. Correct.

Q. And you didn't look at how spreads moved during that period on any Treasuries, whether on- or off-the-run?

MR. TAMBE: Objection to the form of the question.

A. We did look at the Treasury market in terms of yields, but not a particular set of securities other than those that we priced.

Q. And you didn't look at corporates to determine how spreads were moving on those during that period either, did you?

MR. TAMBE: Objection to form.

A. Corporates was not part of my report.

Q. So in attempting to calibrate these Fabozzi -- strike that. In attempting to

determine whether the Fabozzi results reported for on-the-run, off-the-run Treasuries and corporates still held true, you did not actually examine spreads in on-the-run Treasuries, off-the-run Treasuries or corporates; is that right?

MR. TAMBE: Objection to form.

A. These multiples, again, were used as a indication of stress. For example, the actual normal versus distressed allocation across the maturity spectrum for the U.S. agency debt securities that's indicated in the second half of this spreadsheet, we used off-the-run Treasuries and corporates as a proxy.

Corporates would be, in our opinion, conservative for U.S. agency debt securities. So we used an off-the-run Treasuries indication and corporates (intermediate) as indications of stress for the U.S. agency debt market.

Q. Did any of the models you used in preparing the valuations that you -- that you came forward with rely on the Fabozzi spreads themselves?

A. No.

M. Slattery

Q. You simply used the Fabozzi spreads to calculate your multiples?

MR. TAMBE: Objection to form.

A. I'm not sure what you mean by "Fabozzi spreads." I don't --

Q. These Fabozzi bid-ask spreads that were reported on the top half of Exhibit 710B.

A. So could you go back to your question?

Q. Sure. In the modeling work that you did, I take it you did not actually use the spreads that are reported in the Fabozzi data that appears on the top half of Exhibit 710B?

MR. TAMBE: Object to form.

Q. Other than as a basis for calculating the multiples that are reported in the third column on the top half?

A. For the Treasuries, which again, within our report, there was a combination of U.S. Treasury and U.S. agency debt securities, for the Treasury securities, I believe our adjustments, liquidity factor adjustments, if you will, were incorporated in the report, they were incorporated or very similar to the numbers here. For the U.S. agency debt securities, it

M. Slattery

is the distressed continuum that's indicated on the second half of that page.

Q. And the way you arrived at the -- at the distressed numbers on the second half of that page was that you took data concerning off-the-run Treasuries from January 1992 to December 2002; is that correct?

A. For the normal, yes.

Q. And you then multiplied them by the multiple you calculated on the basis of the Fabozzi numbers?

A. Yes.

Q. Did you make any effort to determine whether the data from 1992 to 2002 that you relied on accurately represented conditions in the market in September 2008?

MR. TAMBE: Objection to the form of the question.

A. The market in December 2002 -- or, let me go back. From January 1992 to December 2002, the timeframe we evaluated, that rate period or rate history compared to the way the market was -- the market as of September 2008, from that standpoint, we did, from a level to level,

M. Slattery

but the market was different.

Q. I'm not sure I understand what you mean. When you say that "from January 1992 to December 2002, the timeframe we evaluated, that rate period or rate history compared to the way the market was, the market as of September 2008, from that standpoint, we did," what do you mean?

A. In terms of levels. The level of rates, the absolute level of rates.

Q. When you say "the level of rates," what are you referring to specifically?

A. September 2008, the Treasury market and the agency yields were at a certain level. We compared that, those levels, to the ten-year timeframe.

Q. Did you compare the bid-ask spreads for that timeframe to those prevailing in September 2008?

A. We attempted to do so, yes.

Q. And how did you attempt to do so?

A. We identified a random sample of five securities that we looked at in detail.

Q. And those are the five -- same five securities we talked about previously?

M. Slattery

A. Yes.

Q. And you believe that somewhere there's a document showing that -- showing the results of that analysis that you performed?

A. For price and yield performance from August 2008 through October 2008, yes.

Q. And you're relying on that information for the opinions you're offering in this litigation?

MR. TAMBE: Objection to the form of the question.

A. We're relying on a significant amount of data. Not only that particular segment of our work, but also we evaluated the market tone I think that was suggested earlier and the, again, the performance of the agency securities specifically in September 2008, the implications of the liquidity of September 2008, and the impact that that liquidity would have on bid-ask spreads.

Q. What do you mean you evaluated the market tone?

A. I believe we identify government actions that were taken earlier in the month of

M. Slattery

September by the government, specifically as it related to Freddie Mac and Fannie Mae. The government took ownership of those particular private entities, publicly chartered enterprises, and provided a $200 billion backstop I believe of capital that allowed the market and any potential for disruption or continued stress to be placated.

In other words, attempts were made by the government intervention to quell any growing anxiety in the marketplace specifically related to U.S. agency debt, specifically more related to Freddie Mac and Fannie Mae debentures.

Q. For the Treasury securities that you revalued, what bid-ask spread did you use in your revaluations?

A. I believe it's in the report. I believe it's one to two ticks.

Q. What do you mean by one to two ticks?

A. 1/32 to 2/32.

Q. Where would that be in your report?

A. I'd have to see the report.

(Exhibit 711B, Expert Report of Mark E. Slattery, CFA, dated March 15, 2010,

M. Slattery

marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 711. Do you recognize this as your report in this matter?

A. Yes.

Q. Can you tell me where it would show in your report what bid-ask spread you used in your revaluation of the Treasury securities?

A. I would point to paragraph 25.

Q. And specifically, I take it you are pointing to the last sentence of paragraph 25?

A. Yes.

Q. And that says, "Based on my research and analysis of observed actual market data for bid-offer spread." What exactly are you referring to when you talk about your research and analysis?

A. We looked at prevailing market information from one source, I believe it was The Wall Street Journal, another source, I believe it was the JPMorgan U.S. Treasury and Agency Report, and evaluated the bid-ask spread dynamic for Treasuries during that time.

Q. And what JPMorgan source were you

M. Slattery

looking at?

A. I'm sorry, it's Morgan Stanley U.S. Liquid Rates Tracker."

Q. And did you record the information that you derived from the Morgan Stanley U.S. Liquid Rates Tracker somewhere?

A. Record to the extent that I transferred the data to a spreadsheet, perhaps?

Q. Record in any way. If I wanted to see exactly what data you were looking at --

A. No, not that I'm aware.

Q. And what about The Wall Street Journal, did you in any way record that such that I could -- you could tell me exactly what to go look at?

A. That, again, I believe was just pulled directly from their Wall Street Journal Website. I believe it's encased in a spreadsheet.

Q. Did you rely at all on the -- on the Fabozzi spreads that you have identified here in coming up with a .03 and .06 range?

A. No. As I indicated before, those numbers I believe are similar to what we found during our September 2008 research.

M. Slattery

Q. Were you looking at on- or off-the-run Treasury spreads?

MR. TAMBE: Objection to the form of the question.

Q. Were you looking at spreads for on- or off-the-run Treasury securities?

A. For the Treasury securities that we valued, which are part of the 125, we used observed prices. So, by implication, the spreads that came out of those prices were consistent with market conditions at the time.

Q. You can put your report aside and we'll come back to it in a few minutes.

In your work on this case, to what extent did you collaborate with other experts who have offered opinions in this case?

MR. TAMBE: Object to the form.

A. We had conference calls throughout the process. There were interactions.

Q. Were any of the models you used mutually developed?

A. I'm not sure what you mean by "mutually developed."

Q. In developing the models that you used

M. Slattery

in your valuations, did you have input from any of the other experts?

A. For our report? For my report? No.

Q. You used the valuation date, September 19, 2008; is that correct?

A. Yes.

Q. And why did you select that as the appropriate valuation date?

A. Based on my understanding, the assets were transferred, i.e., the risk of loss was transferred as of 12:01 A.M. on the 22nd. As such, with the securities that I was valuing, prior to the 22nd at 12:01 A.M., the 21st and 20th represented a weekend. Not significant market inputs or variables changed during that time. As a result, the most pragmatic approach that I felt comfortable with, in my opinion, was to value them as of the end of day on the 19th.

Q. What market inputs or variables would you consider to be significant market inputs or variables for purposes of determining whether conditions between close of business on the 19th and 12:01 A.M. on the 21st --

MR. TAMBE: 22nd.

M. Slattery

Q. You're right. Let me strike that question. It was getting a little complicated anyway.

MR. TAMBE: I wouldn't have objected to the form.

Q. When you determined, as you stated you did a moment ago, that no significant market inputs or variables changed between close of business on the 19th and 12:01 A.M. on the 22nd, what market inputs and variables were you talking about?

MR. TAMBE: Object to form.

A. I would rephrase it by saying that the variables, significant variables, for consideration within, you know, the context of our report, my report, would be interest rates and levels of volatility.

Q. Apart from the fact that interest rates and levels of market volatility, in your view, did not change between close of business on the 19th and 12:01 A.M. on the 22nd, did you do anything else to determine whether market conditions had changed significantly between those two periods of time?

M. Slattery

A. Between the 19th end of day and 12:01 A.M. specifically?

Q. Yes.

MR. TAMBE: Objection to form.

A. We did look at other markets if there was any impact or significant deterioration in the two inputs that I highlighted by evaluating overseas markets. We did that to be conservative, to ensure that we didn't miss anything in the process.

Q. And when you say the only significant factors from your perspective were the volatility and the interest rates, are you talking just about with respect to the Treasuries or to all of the securities you valued?

A. Well, I just -- point of clarification. I wouldn't say those are the only inputs that have influence on the value. However, those are the two main catalysts or drivers to the value of the securities that are within the context of my report. And as far as their impact, volatility is not a part of the modeling effort as it relates to Treasuries or

M. Slattery

the majority of the U.S. agency debt securities.

Q. Did you do any analysis to determine whether conditions at the end of the day on the 19th as compared to 12:01 A.M. on the 22nd were more similar in comparison with conditions between 12:01 A.M. on the 22nd and end of day on the 22nd?

MR. TAMBE: Objection to form.

A. From a pragmatic standpoint, it's very difficult to ascertain levels of yields and volatilities at one minute past midnight on the 22nd.

Q. What about general market conditions, did you look at that aspect of it?

A. We looked at end of day on the 19th compared to the end of day on the 22nd, which would then include the full vagaries of the market place for the 22nd, and we quantified the impact of that change in the marketplace for the majority of the securities that we valued, again to be conservative and to put a numerical boundary around the impact of the changes experienced during the market on the 22nd. However, if the transfer of risk of loss

M. Slattery

happened at 12:01 A.M. on the 22nd, the vagaries of the marketplace on the 22nd are really outside the scope.

Q. What did you quantify the difference between looking at the close of business on the 19th and close of business on the 22nd to be?

A. It was --

MR. TAMBE: Objection to form.

You can answer.

A. The quantification of the end of the 19th to the end of 22nd?

Q. Yes.

A. For the majority of the securities, we quantified the impact of the changes in the market to be approximately 51 basis points, so less than 1 percent in terms of the impact on total value.

Q. When you say for the majority of the securities, what do you mean? How are you defining that group?

A. I did not revalue the credit component or the credit segment of the non-agency RMBS through the 22nd, but for -- and also, the CLOs and the CDOs, CMBS. However, for the U.S.

M. Slattery

Treasury and agency debt securities -- excuse me, the agency RMBS, we revalued that portfolio as of the close of business on the 22nd and compared those results to the close of business on the 19th to quantify or to determine the 51 basis points.

Q. And is that something you relied on in reaching the opinions that you have reached today --

MR. TAMBE: Objection.

Q. -- or in this case?

MR. TAMBE: Objection to the form of the question.

A. Again, it's outside the scope of what I was asked to do and what I think pragmatically was the point of the valuation efforts associated with my work, so I don't have an opinion as it relates to that. I'm just telling you what the amount was.

Q. And is that something that you find -- strike that.

MR. SHAW: We've been going about an hour. Why don't we take a short break.

THE VIDEOGRAPHER: The time is 10:30

M. Slattery

A.M. We are now off the record.

(Recess.)

THE VIDEOGRAPHER: The time is 10:41 A.M. We are now on the record.

BY MR. SHAW:

Q. Mr. Slattery, I would like you to take a look again at your report, which I think has been marked as Exhibit 711-B, and specifically, if you'd go to page 2 of your report. Looking at the last sentence of paragraph 4, where you state, "I present valuations based on third party pricing sources."

What third party pricing sources specifically are you referring to?

A. We have them listed in the latter stages, FactSet, Cap IQ, Interactive Data and Bloomberg, I believe, two different Bloomberg values.

Q. Did those third party pricing sources present actual trade prices or indicative levels?

MR. TAMBE: Object to form.

A. I'm not sure if they gave actual trade or indicative levels. My understanding would be

M. Slattery

that they gave prices that were consistent with market expectations at the time. Interpretation and definition of those prices, I guess, would be subject to debate.

Q. Did you do any analysis to determine whether there were reliability issues with the prices reported by these services in volatile markets for complex assets?

MR. TAMBE: Objection to the form of the question.

A. Could you repeat that question?

Q. Sure. Did you do any analysis to determine whether there are reliability issues with the prices reported by these services in volatile markets for more complex assets?

A. For all --

MR. TAMBE: Objection to form.

Object to form. Sorry.

A. For all the third party pricing sources including BoNY?

Q. For any of the third party pricing services that you relied on.

A. I did not.

Q. If your experience showed such

M. Slattery
reliability issues, is that something you would have wanted to consider?
MR. TAMBE: Objection to form.
A. If you're asking me if there are reliability issues with any source of valuation, be it within the context of this or any other, probably are reasons to evaluate further, yes.
Q. So if you had an analysis that showed there were reliability issues with any of the pricing sources that you used, that would be an appropriate thing to consider in arriving at the valuations; is that correct?
MR. TAMBE: Objection to form.
A. I'm not sure that I necessarily have a reliability issue or issues with the reliability of the sources that we did use.
Q. I understand you're not sure one way or the other whether that's the case, but I'm saying if you assume that there -- that you had experience showing there were reliability issues in volatile markets with these sources, is that something that would be appropriate to consider when analyzing the valuation of these assets?
A. The pursuit should be the valuation,

M. Slattery
the best valuation or the best value that you can assign. Therefore, if you had grounds for reliability or concerns, the assumption would probably have merit.
Q. Looking at the first -- sorry, the second sentence of paragraph 5, you state that, "My independently calculated values are based on a robust valuation framework, state of the art models and data libraries customarily used by market participants, including Barclays itself."
Do you see that?
A. Yes, sir.
Q. Which models specifically are you referring to in that sentence?
A. The data libraries.
Q. No, the models.
A. No, I'm referring to the data libraries.
Q. I see. Which data libraries specifically are you referring to?
A. Intex would be a deal library that I believe is commonly used throughout the market both by street firms such as Barclays as well as people like myself. It's possible that the

M. Slattery
state of the art models in some form are also being used by entities such as Barclays.
Q. On what date did you set up the portfolio on your system?
A. What date?
Q. On what date or dates did you do your modeling activity?
MR. TAMBE: Objection to the form of the question.
A. I don't know the exact date, but you're not -- you're not referring to the "as of" date of the valuation or the analytical date, you're talking about the specific date during the course of the 12 weeks when we --
Q. Yes, sir.
A. It varied because we created segments along the way, so I don't have a specific date. It was a series of dates.
Q. Those series of dates obviously were in 2010, is that fair?
A. Yes.
Q. Do you know if the models that you relied on or the data libraries that you relied on are the same as they would have been if you

M. Slattery
had pulled them up on or around September 19, 2008?
A. We took extreme diligence as it relates to creating a framework that would have been in place as of September 2008. In other words, Intex, as an example, you can pass the "as of" date to that tool and obtain information that was only available as of that date as opposed to going forward and benefiting from a prospective look or based on actual performance.
So you can create a framework, which is what we did, which is reflective of all the attributes of the environment, analytically speaking, as of September 2008.
Q. And by that do you mean that you simply don't look at any data following the date for which you set as your valuation date?
MR. TAMBE: Objection to the form of the question.
A. I'm not sure what you mean by "you don't look at any data."
Q. For example, do you know if the prepayment assumptions in those models for the period of time -- strike that.

M. Slattery

Do you know if the prepayment assumptions in the models that you looked for the periods of time that you looked at were the same then as they would have been closer to September 22?

MR. TAMBE: Objection to form.

A. Same then versus -- you mean September 19 versus September 22?

Q. No. No. Let me do it a little differently.

Do you know whether Intex, for example, updates its historical prepayment assumptions retrospectively?

A. Well, Intex doesn't necessarily update its prepayment assumptions. So Intex is not the prepayment tool that we used.

Q. What was the prepayment tool that you used?

A. The Andrew Davidson & Company model, known as AdCo.

Q. Do you know if the AdCo database updates its prepayment assumptions retrospectively?

A. I believe that they -- the models such

M. Slattery

as AdCo are subject to constant evolution. However, again, we made a painstaking effort to only use the version of the AdCo model that was available to market participants as of September 2008.

In other words, we integrated a valuation framework as if it was September 19 on that Friday, 2008, we did not benefit or influence the results by blindly integrating the current AdCo model, if that's the question.

If AdCo, as a tool, as its competitors and contemporaries, they are again subject to constant evolutions. So you probably would see a different prepayment model offered by Andrew Davidson for an individual that was looking to put together a valuation framework as of April 2010.

Q. That's not quite what I was asking, though.

A. Okay.

Q. Whatever the model is, there's a set of prepayment assumptions that feed into it; is that correct?

A. Yes.

M. Slattery

Q. And so my question is, did you do anything to assure that the prepayment assumptions which fed into the model that you were using were the same set of prepayment assumptions for the valuation date you were looking at as would have been in the system closer to that valuation date?

MR. TAMBE: Objection to form and asked and answered.

You can answer.

A. Yes, I apologize if I wasn't articulating my answer. But we put together a framework, including the AdCo component, as if it was September 19, 2008. So we used the version of that prepayment model that was available as of September 2008. We definitively chose not to use the current AdCo version.

Q. And so is it your understanding that it's possible today to get, for example, precisely the same prepayment assumptions that were in the AdCo model on 9/19/08?

A. Based on my understanding of the --

MR. TAMBE: Objection.

A. -- again, the way in which we designed

M. Slattery

the analytical configuration -- and people, market practitioners like myself, we have to do this all the time, we have to value things after the fact. This just so happened that it was a 15- or 16-month date in the past. But again, we made a conscious decision to make sure that the framework in totality reflected only the analytics and the embedded assumptions that would be available to participants as of September 2008.

Q. And how did you go about ensuring that all of the model inputs were precisely those that would have been available to the participants in September of 2008?

A. Because I've done this a number of times before in my professional life. We made sure that the vendors that supplied key inputs, specifically, AdCo, provided us with the prevailing prepayment model as if it was September 2008 as opposed to just accepting software that would be provided to a new user as of April or January 2010 or whenever those "as of" dates were that I integrated or started to value the portfolio.

M. Slattery

Q. Is it your understanding that they archived the entire set of assumptions as they stood on any particular day?

A. Again, they don't archive specific dates. What they do is they archive software, code, if you will, and usually that code holds up for a period of time. And then at some point, based on advancements in the marketplace and additional empirical observations and latest and greatest techniques, statistically, let's say, they might come out and present the market with a new, enhanced, polished version.

So we put in place the version that was available to market participants as of September 2008. We chose specifically not to take the more current version. Because there are different versions of AdCo. Now, whether they archived their program since inception, I don't know. I would assume they have it somewhere, but that's outside our scope.

Q. Okay. And I understand that you were asking them to give you a historical version of the models. What I'm trying to determine is whether the inputs that fed into the models were

M. Slattery

as they stood on the valuation date or reflected corrections and updated data as they -- that may have been entered into them at some subsequent point?

MR. TAMBE: Objection to the form of the question.

A. I can't specifically answer what each one of the software vendors do with respect to their software. If they make a representation in the marketplace that this is the package that was available as of that date, but yet we stand here 15 months in the future, if they have integrated enhancements or upgrades because of bug fixes, I don't know of the exact history of the softwares. But again...

Q. Yes, and just so I'm clear, I'm not -- I understand that they are continually upgrading the models themselves. My point is that -- the data that feeds into those models.

A. Uh-huh.

Q. And that's what I want to focus on.

A. Okay.

Q. What did you do to ensure that the data that fed into those models, the inputs, had

M. Slattery

not been corrected or changed since September of 2008?

MR. TAMBE: Objection to the form of the question.

A. Again, for example, if you want to get into some detail with respect to AdCo and the integration within a software application that we used for the rate engine, in the valuation engine, you integrate AdCo, you pass to the Andrew Davidson & Company model an analytical "as of" date which is supplied through the rate engine.

Internal to that interface or that application program interface is the exchange of date and then, correspondingly, information that's only relevant as of that date. So I relied on the software, and I don't have -- I do not possess intimate knowledge if Andrew Davidson or Intex went back and revised and updated information after the fact.

We specifically asked for and put in place the market inputs that were only available as of September 19, 2008. The expectation was that we were driving valuations as of that date

M. Slattery

in totality, so ...

Q. And why did you undertake that effort, to try and ensure that that was the case?

A. I wanted to derive a value that was as of September 19, 2008. So it's important to include what the market would have had available to it in terms of a tool kit and a tool set. It's disingenuous to value things with an upgraded model, let's say.

Q. Last sentence, paragraph 5, you state that you assigned unbiased prices. Do you see that?

A. Yes.

Q. What do you mean by "unbiased" in that context?

A. We had no particular designs on or emphasis of a particular set of third party pricing suppliers. To the best of our knowledge, the best of my knowledge, they were collected in a completely unbiased and unemphatic way to create an independent and autonomous value set.

Q. Are you making any contention in this case that the people who performed valuations

for Barclays shaded their valuations in any way out of bias?

A. No, I don't have an opinion about that particular aspect, no.

Q. First sentence of paragraph 6, you state that, "Barclays' estimated values were based on arbitrary and indefensible discounts taken by Barclays." Do you see that?

A. Yes.

Q. What do you mean by "arbitrary"?

A. Repeated attempts throughout the process, as far as I know, we asked for indications or support for varying liquidity discounts or liquidity discounts across a broad spectrum of securities that were part and parcel of my report. To the best of my knowledge, I have yet to receive anything that supports, say, for example, a 5 percent blanket discount on Treasury and agency securities. I don't know. Methodology-wise, it's probable that there is information available. I just have not seen it.

Q. When you say a "5 percent blanket discount on Treasury and agency securities," is it your understanding that Barclays applied a 5

percent liquidity discount to all the Treasury and agency securities it valued?

MR. TAMBE: Objection to form.

A. Based on my review, based on ones that I specifically looked at, it appears as though the liquidity discount on the agency securities, specifically, the 5 percent, is the number that we saw being used throughout.

Q. What about the Treasury securities?

A. The Treasuries I'd have to go back and check exactly what the number was.

Q. Footnote 3, you state "in the case of 40 securities," you see that?

A. Yes, sir.

Q. What 40 securities are you talking about?

A. What we did in terms of identifying the securities that would be subject to detailed ground-up valuation efforts, we established a million-dollar threshold. The million-dollar threshold represented the difference between the Barclays liquidity adjusted value and the BoNY value. It was a straightforward A-minus-B exercise.

These 40 securities that are referenced here fell into that threshold or they exceeded the million-dollar threshold. However, to the best of my knowledge, we were unable to accumulate meaningful information to derive a ground-up valuation for each one.

An example -- off the top of my head, I don't know the 40 securities. I can give you an example of one. I believe it's a Tanzanite Series 2005 Class 2 security. We have a CUSIP, we have the identifier, but beyond that, I could not secure information that was meaningful for a ground-up valuation.

Q. And if I wanted to see a list of those 40 securities that you're talking about here, where would I go in your work papers to look for it?

A. They are part of the third party pricing. I don't know if I have specifically earmarked them or not.

Q. When you say a third party pricing, you're talking about the bucket of 6,000-plus --

A. Yes.

Q. -- securities?

And then you say "where Barclays failed to provide information related to particular securities," you see that?

A. Yes.

Q. What information specifically are you referring to?

A. Again, the example would be or the answer would relate to meaningful information for which we can actually calculate cash flows, apply discount rates to do a true valuation from the ground-up.

So, again, in terms of the Tanzanite Bond, and I may be mispronouncing that word, but I just could not obtain specific information as it related to the dynamics or the cash flow rules or anything related to that security.

Q. So, for that reason, you put it in the general bucket of 6,000 or so that you valued using third party pricing?

A. Yes.

Q. Going back up a moment to this line about unbiased prices, when you say you assigned unbiased prices, you did that only with respect to the population that you identified based on

M. Slattery

this million-dollar variance from the BoNY numbers; is that correct?

MR. TAMBE: Objection to the form of the question.

A. Please repeat that one. I didn't think it's --

Q. I just want to be clear. When you say that for securities that were -- strike that. Strike that.

Turning to page 6 of your report, specifically, Section A, where you looked at 125 U.S. Treasury and agency debt securities?

A. Yes.

Q. Is there a list in your production of the 125 specific securities that you revalued?

A. Yes.

(Exhibit 712B, an excerpt from LEHMAN-NAVIGANT 026180, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 712B. Is this document that list?

MR. TAMBE: I have the same objection with respect to printouts from spreadsheets. Object to the form of the question.

M. Slattery

And if you could identify the file that it comes from, that would be really helpful. There's no identifier on this document.

MR. SHAW: Yes. It is LEHMAN-NAVIGANT 026180.

MR. TAMBE: And is it the entire spreadsheet? Do you know?

THE WITNESS: It doesn't seem like it's the entire spreadsheet.

MR. SHAW: It is all the tabs on the entire spreadsheet is what I'm told.

THE WITNESS: But in terms of the print, it looks like the print range was not in the total --

MR. SHAW: It's all the tabs but not all the rows.

BY MR. SHAW:

Q. Do you understand that document to be your list of 125 assets?

A. Let me -- it's cut off, but --

Q. Right. I understand that it's not a complete list.

A. Right. This is a segment of that 125.

M. Slattery

MR. TAMBE: Just to be clear, because it's not clear to me, is it the first page of that? I don't know if there's different things on different pages.

MR. SHAW: It's each of the tabs in the spreadsheet.

MR. TAMBE: Yes.

MR. SHAW: But not the full tab of the spreadsheet because it got long without any purpose.

MR. TAMBE: Okay. The only reason I ask is because you're asking about 125 entries.

MR. SHAW: This doesn't have that.

MR. TAMBE: This doesn't have that.

MR. SHAW: It is a subset of the printout.

MR. TAMBE: Okay.

MR. SHAW: Yes.

Q. Looking at the first page, sir, can you go across the columns and tell me what each column represents?

A. "CUSIP" would be the security identifier, so I believe the acronym is

M. Slattery

Committee for Uniform Security Identifications Procedures. The "Mid," the next column, would represent the mid value prior --

Q. That's the mid value that you calculated?

A. Yes, sir.

Q. Okay.

A. -- prior to a liquidity factor, which is the next column. The "Bid" corresponds to a mid times liquidity factor calculation. The "Priced/Spread Mapped" column represents for those instruments or securities where we had observed prices, we indicate priced, and you see a couple examples. Because this was cut off, the actual Treasury securities, which I know have a different CUSIP than the ones represented here, would be predominantly priced as opposed to spread mapped.

And then the spread to the U.S. Treasury is indicated. That spread is defined in terms of basis points. So, for example, if the underlying rate was somewhere in the 4 percent level. The 180 in the first row would represent a 180-basis-point premium to that 4

M. Slattery

percent rate, just as an example.

And then the "Underlying Curve," we obtained the appropriate market inputs from Bloomberg. This is, again, maybe dovetails back to the previous discussion about "as of" So we took the information from Bloomberg as of the end of business on the 19th, 2008, and the model we ran these through was Polypaths.

Q. Tell me what the source of your mid prices were.

A. It depends on whether, again, it was priced or spread.

Q. Okay. So tell me what the source of a spread mid price would be.

A. We calculated spreads based on those instruments that we had prices for and we allocated indicative spread levels to the rest of the universe. On a mid-value-to-mid-value basis across the entire 125, as I indicate in page 6 of my report, paragraph 17, that there was minimal value differences between the Barclays value, assuming the use of the word "mid" is relevant, versus our mid value calculation. So...

M. Slattery

Q. So what you're saying, if I understand you correctly, is that the majority of the difference between your valuation and Barclays' valuation of these securities comes in in the liquidity discount?

A. Yes, sir.

Q. And what was the source of the liquidity factor that you applied to each of these securities?

A. This goes back to the early morning discussion with respect to the derivation of the liquidity factor. We used the Fabozzi information as a basis to identify the multiple for a distressed market, and then we used information from '92 to 2002 to identify an off-the-run Treasury series and then multiplied the normal bid-ask spread levels times the stress percentage or multiple or factor to identify a liquidity factor that is a maturity-specific liquidity factor.

So we took attempts to introduce a methodology that would give us a range of liquidity factors and used maturity as the key driver for that.

M. Slattery

Q. How would you go about determining what the appropriate liquidity factor was for a Treasury security?

MR. TAMBE: Objection to form. Asked and answered.

Q. As distinct from an agency.

MR. TAMBE: Same objections.

A. We would look at historical information.

Q. When you say "spread mapped," can you define that for me, please?

A. The value in the "Spread/UST" field again would be an adjustment. In this case, since they're all positive, they would be an increase to the underlying discount rate. Since this is expressed in basis points, it would be, for the first row, it would be 180 basis points increase on the discount rate.

And again, based on the allocation of these spreads for those instruments that were spread mapped, the mid values almost across the -- literally across the entire 125 securities set matched up to the Barclays values with minimal difference.

M. Slattery

Q. So if I wanted to determine which of the 125 securities were valued or revalued based on identifiable prices for that security, I would look for the ones in the column "Price/Spread Mapped" that reads "priced"?

A. Yes.

Q. And the rest were valued based on comparables; is that correct?

A. Yes.

Q. And how did you select and ensure the appropriateness of the comparables you selected?

A. For those that we actually had prices for, we leveraged that information. So we made sure that we attempted to identify the same agency and, to a lesser extent in this universe, maturity consistency. So, in other words, we didn't want to match up a ten-year debenture with a thirty-year debenture or vice-versa.

But to reiterate again, the spreads that are here for the mid value determination match up to the Barclays values.

Q. Did you consider the BoNY prices for any of these 125 securities that you revalued?

A. No, I did not.

M. Slattery

Q. Why not?

A. I had enough information available to me. These instruments were part of the security set that exceeded the million-dollar threshold, so they allowed me to derive from a ground floor level a ground-up valuation and assign a value.

Q. What was the distribution of on-the-run versus off-the-run securities in the portfolio of agency and Treasury securities that Barclays acquired?

A. I don't know that answer.

Q. Which -- so how, then, did you know which factor to apply of the bid-ask spreads from the Fabozzi data to any given security if you didn't know if it was on-the-run or off-the-run?

A. The Fabozzi data represented the multiples to the normal bid continuum. So Fabozzi provided us with a factor estimate of the distance or the movement from a normal to a distressed market.

We used a combination of the off-the-run and corporates for the U.S. agency liquidity factor determination. The reason we

M. Slattery

did so is because we felt that the U.S. agency market was more in line with an off-the-run Treasury or maybe even more conservatively so a corporate market than a true on-the-run security, on-the-run Treasury security.

So we tried to introduce a very conservative adjustment on a maturity-specific basis for the normal bid levels to derive the distressed bid-ask spread levels.

Q. Now, as I understand it, you tested the yields on individual securities among the 125 that you identified. Did you analyze the yield on the entire portfolio of Treasury and agency securities that Barclays acquired?

A. In what sense?

Q. In any sense.

A. We calculated the yields in the function of the pricing exercise and compared those to the information that we had available to us as far as the yield levels in the marketplace during that period. So on a mid-to-mid basis the yields were very consistent.

After adjusting or, let's say, for

M. Slattery

example, using the 5 percent liquidity factor, the Barclays yields on the U.S. agency debt securities were significantly higher than the marketplace yields for that period.

Q. Is that across the entire population of securities that Barclays acquired or is that across the population of 125 that you looked at?

A. Well, the 125, again, include Treasuries and agencies.

Q. Right.

A. So the Treasuries, we'll put that to the side.

Q. Yes.

A. The U.S. agency debt securities, it was -- the yield levels that were calculated based on my introduction of the 5 percent adjustment to take the mid down to a bid, again, using a factor of point -- or, 95 as opposed to .98, the yields that were then generated were significantly higher than what the marketplace was expecting.

So, in other words, using the 5 percent liquidity adjustment, I was able to generate yields that were significantly higher

M. Slattery

than the marketplace.

Q. And my question, though, is did you calculate the yields on only the agency Treasuries or, sorry, the agency securities within the population of the 125 that you looked at specifically or did you calculate the yields across the entire population of agency securities that Barclays acquired?

A. I see.

Just the population that I examined in detail.

Q. Did you find any -- any agency securities within the population you examined where the yields were less than you would have expected to see based on your analysis, the yields, the yields given by Barclays' calculations?

A. Did I see, just to rephrase it -- let me make sure -- did I see any yields that were implied by the 5 percent adjustment, the integration of the 5 percent adjustment that were below the market returns at that time?

Q. Yes.

A. I don't know exactly if I -- I did not

M. Slattery

go individually row-by-row-by-row, but across a check, to the extent that I did, especially on the money market instruments, the yields were significantly higher, money market being those that have maturities within one year.

Q. And what about those that have longer maturities, did you check those?

A. I did run the analysis. I can't recall exactly what those yields looked like at this point.

Q. When you say you ran the analysis, is that something that would be reflected in your work papers?

A. I don't -- it was not part of the work papers that were provided, and I don't know if I captured that, if I memorialized that.

Q. In the population of 125 securities that you actually looked at specifically, what was the breakdown of time and maturity?

A. I don't recall exactly what that breakdown was at this point. I would have to look at my work to make that determination.

Q. What yields did you -- strike that. Did you examine any agency securities that had

M. Slattery

maturities in the range of 30 to 50 years?

A. Again, I'd have to look at my work to exactly identify the terms of the maturity on the securities.

Q. Where would you go to look, where in your work papers would you go to look for that?

A. Spreadsheets.

Q. Would that appear on Exhibit 712B? Would I be able to derive that by looking at Exhibit 712B?

A. No. However, if we took a CUSIP and ran it through Bloomberg, we would be able to quickly identify the maturity.

Q. If we could go to page 3 of --

A. Are these -- sorry.

Q. Let's strike that. We'll come back to this exhibit later, but for now we'll ...

A. Okay.

Q. And your understanding is that Barclays used a 5 percent liquidity discount across the population of agencies; is that correct?

A. Based on my understanding of 86B, yes.

Q. What do you mean by "86B"?

M. Slattery

A. I believe that's a spreadsheet that we used as an initial basis for the CUSIP universe.

Q. Are you able to tell me on your table of materials relied upon which document you're referring to as 86B?

A. I think it's under the deposition exhibits. It's an exhibit that's indicated in the first --

Q. Initial Inventory of Schedule A and B Assets?

A. I believe that's the spreadsheet, yes.

Q. And as you sit here today, are you able to tell me what liquidity factor or liquidity discount Barclays applied to the Treasury securities?

A. I cannot recall off the top of my head. I don't think after even the mid to bid adjustment that there was a significant deviation. I think within the 125, the majority of this indicated valuation difference is U.S. agency debt security related.

Q. Of the 632 Treasury or agency securities that Barclays acquired of which your 125 are a subset, are you aware of any instances

M. Slattery

where pricing data was not available to that security?

MR. TAMBE: Objection to the form of the question.

A. What do you mean by "pricing data"?

Q. Data that you would require to calculate specific bid-ask spreads for that security.

MR. TAMBE: Objection to the form of the question.

A. Yeah, I apologize, I -- what exactly is the information that you seek?

We had information that allowed us to value these 125. These 125 represented those instruments based on the delta threshold or the difference between Barclays' liquidity adjustment and BoNY's custodial values that created their -- you know, identified them, if you will.

Q. Why did you use comparables when constructing your bids?

A. For the mids?

Q. Yes.

MR. TAMBE: Objection. Asked and

M. Slattery

answered.

Q. I'm sorry. The bid-offer spreads, why did you use comparables when constructing your bid-offer spreads?

A. We used the information that we've discussed with respect to the bid-offer spreads.

Q. And when you say "the information we've discussed," you're referring to Exhibit --

A. 710B.

Q. Paragraph 25 of your report, sir, you state that "U.S. Treasury securities are, in fact, the most liquid instruments in the capital markets universe, and typically trade at prices where the difference between the bid and the offer are as small as 0 to .03 percent." Do you see that?

A. Yes.

Q. Was September of 2008 a typical market?

MR. TAMBE: Objection to the form of the question.

A. Relative to other markets, it was unique, but it was --

Q. In what way was it unique relative to

M. Slattery

other markets?

A. The events that were happening to firms such as Lehman during that period.

Q. And apart from looking at the five securities we discussed earlier today, did you do anything to see what bid-offer spreads were during this time for Treasuries?

A. For Treasuries, again, we identified information that we gleaned from different sources to identify what the bid-ask or what the spread dimensions were for Treasuries at that time, yes.

Q. And that was The Wall Street Journal data you referred to earlier?

A. Right.

Q. And what specifically Wall Street Journal data were you referring to?

A. Price information, bid-ask price information.

Q. On these particular securities or on other securities?

A. On -- I think there was a couple that were part of the 125, again, probably on that second page because of the cut-off, and as well

M. Slattery

as other Treasury securities.

Q. How did you select the other Treasury securities that you looked at?

A. They were just part of the dataset that was obtained from The Wall Street Journal. There was no particular reason one way or the other.

Q. Do you know whether spreads in Treasury securities were widening throughout September of 2008?

MR. TAMBE: Object to the form.

A. I don't know exactly at a particular point. You know, we would have to go day-by-day. I would have to examine it day-by-day.

Q. What about agency securities, what were spreads doing throughout the month of September 2008 on those?

MR. TAMBE: Objection to form.

A. I cannot sit here today and give you exactly day-by-day description over that period. I do recall that there was movement obviously throughout the period that we reviewed in great detail, i.e., that between August of 2008 and

M. Slattery

October 2008, there was movement, but there was never a spike that created an abnormal market to the extent that the yields went through some arbitrary roof, if you will.

Q. Were agency securities during this -- what was happening with the trade volume of agency securities during September of 2008?

A. In terms of outstandings, they were in trillions as far as debt outstanding. In terms of the trading activity, I believe on a daily trading volume basis across the entire year of 2008, it was in the hundreds of billions a day. I don't know specifically exactly what was transpiring during that particular window, but the outstandings held up, as did the daily trading volume throughout the year.

Q. Paragraph 26, first sentence, referring to your report, you state that -- or, I should say second sentence, "For U.S. Agency securities with no available market quotes," and those would be the ones that are listed as or identified as spread mapped rather than priced?

A. Yes.

Q. On Exhibit 712B?

M. Slattery

A. Yes.

Q. Did you collect available market quotations for other U.S. agency securities?

A. Others?

Q. Other than the ones with no available market quotes or the ones that -- outside of the 125 that you revalued?

A. There was information available like that, yes. So, in other words, securities, agency debt securities with price information that did not match up in terms of the individual CUSIPs listed here, yes.

Q. And at the -- in the last sentence of that paragraph, when you talk about comparable agency securities, the criteria by which you measured comparability were what?

A. Was the --

MR. TAMBE: Objection. Asked and answered.

You can answer.

Q. You can answer.

A. Was the entity. So matched up Freddie Mac debentures to Freddie Mac debentures, and tried to take strides in terms of maturity as

M. Slattery

well so that we didn't inadvertently assign a spread for a ten-year instrument and assign and map that to a thirty-year instrument.

Q. In selecting your comparables, did you consider whether the particular security was on-the-run or off-the-run?

A. No, I did not.

Q. Why not?

A. For on-the-run versus off-the-run for agency or freshly minted or, I mean, what is the criteria that you're alluding to, just for clarification sake?

Q. For the agencies.

A. Why I did not?

Q. Yes.

A. That's not the way I created or that's not the framework that I followed.

Q. Did you, in the course of valuing these securities, discount cash flows?

A. Yes.

Q. And what assumptions did you use in discounting the cash flows?

A. There were no assumptions.

Q. What inputs did you use?

M. Slattery

A. The security description such that you would glean from that state of maturity, coupon, where appropriate, pay frequency. So those are all spelled out based on the issuance, and then the other input would be the underlying curves that were used for valuation. So a Treasury as of the 19th and the LIBOR rates as of the 19th.

Q. What time horizons did you use for purposes of discounting the cash flows?

A. Time horizons?

Q. Yes.

A. Can you clarify that, please?

Q. The yield curve you used, was that for 9/19/2008 only, or did you look at other yield curves?

MR. TAMBE: Objection to the form of the question.

A. For purposes of the report, 9/19/2008.

Q. What discount rate did you use in conducting your discounted cash flow analysis?

A. The discount rate that falls out is a series of rates based on the bootstrapping and the underlying curve, which is a function of the model. So it's an array of rates that I don't

M. Slattery

have the ability to articulate and recap at this point.

Q. Did you produce or did you record the bootstrapped data such that if I wanted to determine what you used, I could go and look at some portion of your work papers?

A. No. That is encapsulated in the software program. I did not choose to extract that or examine that.

Q. And which particular software program are we talking about?

A. Polypaths.

Q. Is Polypaths a multiple models or databases available?

A. Multiple versions of the software?

Q. No. Where in Polypaths would I go to look to find that information?

A. It might be a rates extract field or utility. I didn't examine it.

MR. SHAW: Why don't we go off and have him change his tape.

THE VIDEOGRAPHER: This concludes tape number 1 of the videotaped deposition of Mark Slattery. The time is 11:37 A.M. We

M. Slattery

are now off the record.

(Recess.)

THE VIDEOGRAPHER: This begins tape number 2 of the videotaped deposition of Mark Slattery. The time is 11:46 A.M. We are now on the record.

(Exhibit 713B, excerpt from LEH-NAVIGANT 026162, marked for identification, as of this date.)

BY MR. SHAW:

Q. Showing you a document that's been marked as Exhibit 713B, which I will represent to you is a printout, or at least a partial printout in that some of the rows may have been truncated, of the document produced as LEH-NAVIGANT 026162.

I'll ask you if you recognize what this document is.

A. Yes.

Q. Okay. What is it?

A. This, I believe, is the information that we obtained from The Wall Street Journal extract for the 19th of September.

Q. And this is The Wall Street Journal

M. Slattery

data that you referred to earlier today in your testimony?

A. Yes.

MR. TAMBE: Objection to the form of the question.

Q. You can put that aside.

Turning to page 10 of your report, sir, and looking at the section on Agency RMBS, now you valued 308 distinct Agency RMBSs; isn't that correct?

A. Yes.

Q. And were there any Agency RMBSs included in the 6,000 or so CUSIPs in the bucket which you used third party prices for?

A. To the best of my knowledge, yes.

Q. So you really, in a sense, valued -- well, 30 is a subset of the ones that you valued, is that fair?

MR. TAMBE: Objection to the form of the question.

A. 308 represent the instruments that we valued from, again, the ground floor up. There are other securities that we valued through third party pricing means.

M. Slattery

Q. And how did you select those 308?

A. This goes back to the filtering process or the selection process, which was simply the establishment of a million-dollar threshold between the Barclays liquidity adjusted values and the custodial values of BoNY, so ...

Q. And so did you do a -- this is not just related to the Agency RMBS, but across the entire population of securities that you looked at is it fair to say that you did a specific from-the-ground-up valuation of each one in which you identified a difference of a million dollars or more between the Barclays and the BoNY valuations?

MR. TAMBE: Objection to the form of the question.

A. Except for I believe the footnote 3, which indicates again there is a group of securities that met the million-dollar threshold criteria, but because of the information or the lack of information, they fell into the third party pricing.

Q. Paragraph 30, I just want to make sure

M. Slattery

I understand what you're saying. Second sentence, you state that Barclays' methodology for deriving an exit price for these securities by taking a flat, across-the-board 10 percent discount. You see that?

A. Yes.

Q. And your understanding is that's true with respect to all Agency RMBS that Barclays valued?

A. I'd have to check specifically in terms of each one, but from my understanding, I believe 10 percent was the dominant discount that was taken.

Q. What do you mean by the "dominant discount"?

A. I'd have to double-check to make sure that it was across the board, as you suggest, but it was definitely applied in the 308 securities that we looked at in detail.

Q. Every one of them?

A. I probably should hesitate and just make sure that I look at each CUSIP, but I don't have that knowledge at this point or memory fails me to the extent that I don't know on a

M. Slattery

CUSIP-by-CUSIP basis if it was exactly 10 percent at each turn.

Q. In the population of 308 that you valued, were there any agency pooled securities?

A. Agency pool, straight pools, no. We had a combination of trust IOs and POs, interest-only securities and principal-only securities, and then we had structured Agency RMBS, and there -- there actually may have been a handful of agency pools, so I'd have to double-check again in my notes and look at each CUSIP in terms of the definition, but there may have been a handful.

Q. Go to paragraph 41 of your report, if you would, please. So am I correct that of the 308 securities population, there were 24 for which you obtained actual price quotes from multiple broker-dealers?

A. Yes.

Q. Okay. And you valued those differently from the 284 remaining of the 308 group?

A. Differently to the extent that the determination of price on these 24 was directly

M. Slattery

extracted from market information. The other remaining dataset within the 308 we used information that we gleaned from a broader mix of similar CUSIPs to the 24 that are indicated here and applied at the end of the day the same valuation techniques.

Q. So if I'm understanding this correctly, what you're saying is that for 24 of the 308 securities you were able to get multiple prices and you used those to determine your -- the price preliquidity discount with respect to those securities; is that correct?

A. Yes.

Q. And then for the other 284 in your population of 308 you used what you determined to be comparable securities to determine an appropriate price preliquidity discount; is that correct?

A. That's fair to say, yes.

Q. And how did you select the comparable securities that you were going to look at for purposes of valuing the 284?

A. Again, bearing in mind there may be some pools in the remaining 284, but the

M. Slattery

majority of those, I know that there were at least 237 structured agency interest-only and principal-only securities. In other words, these securities sat within the confines of a structured deal such that their payment rules were a function of other components of a deal, as opposed to the trust interest-only and principal-only securities highlighted in paragraph 41.

What we did was we expanded the universe of trust interest-only and principal-only securities to where I believe we had something on the order of almost 300 pairs of trust interest-only and principal-only securities. We valued them and then gleaned from that valuation exercise indications for a determination of the value of the other securities.

Q. And the reason you used comparables for the 284 was because you could not find prices for those securities; is that correct?

MR. TAMBE: Objection to the form of the question.

A. I determined prices for those 284 by

M. Slattery

following the exercise that I just articulated.

Q. Right, but you couldn't find a traded price for those securities; is that right?

MR. TAMBE: Objection to form.

A. Based on my discovery, I did not find a traded price for those securities.

Q. And to the extent that there were Agency RMBS in the bucket of 6,000-plus securities that you valued based on third party prices, what technique did you use to value these?

A. Within the third party pricing?

Q. That is, any Agency RMBS that were not within the group of 308 we previously talked about.

A. That was one of two things. It was either the average of obtained third party prices, or if there was a deviation in the sense that there were no third party pricing prices available, or if the average of the third party price was outside of two standard deviation when compared to the Barclays' value and the BoNY's custodial value, we would use the BoNY price and then we would adjust it predominantly based on

M. Slattery
the Barclays liquidity factor. So it could be one or the other of those two methods.

Q. So of the entire population of RMBS securities that you valued, either in or outside the 308, what percentage were you unable to find any price for?

MR. TAMBE: Objection to the form of the question.

A. Percentage on a CUSIP basis? On a value basis? What --

Q. Let's take it both ways. What percentage on a CUSIP basis?

A. I don't know.

Q. What percentage on a value basis?

A. I don't know.

Q. And when you use comparables to derive a price, did the process that you used or the model that you used differ depending on whether the RMBS in question was an agency pool, a sequential CMO, a PO or an IO?

A. I'm just going to rephrase it. The process that we followed for the 284, again, acknowledging that there are probably pools in that 284, the structured agency IOs and POs that

M. Slattery
are in the 284, we followed a process where we valued almost 300 trust IOs and POs, calculated spreads from those 300 instruments, so actually 600 in total, and then we assigned those spreads to the structured agency CUSIPs based on a consistency for underlying collateral considerations. So we matched up the underlying gross coupon and the underlying weighted average maturity. So we built a matrix.

Q. And has that matrix been produced?

A. Yes.

Q. Do you know whether -- you're aware, strike that.

Are you aware that in December of 2008 an additional population of securities was transferred to Barclays pursuant to the settlement?

A. I believe I heard conversations as it relates to transfers of such securities, but I don't know any intimate details in terms of the specific dataset and what they represented value-wise and what they represented in terms of pay types, et cetera.

Q. You don't know, for example, if there

M. Slattery
are any RMBS securities in that population?

A. Again, I don't know intimate details of that population.

(Exhibit 714B, a document produced as LEH-NAVIGANT 015949, marked for identification, as of this date.)

Q. Showing you now what has been marked as Exhibit 714B, sir. Can you tell me what this document is?

MR. TAMBE: I have an objection to the spreadsheet printout, a standing objection.

MR. SHAW: I actually think this one is a complete printout.

MR. TAMBE: Okay, it's a complete spreadsheet.

Q. And just so it's clear, I should tell you this is a document that was produced as LEH-NAVIGANT 015949.

MR. TAMBE: Thank you.

A. This is, I agree, in total. So you have the 24 securities that are referenced in paragraph 41. These are -- it's a combination of trust interest-only and principal-only securities.

M. Slattery
So the identifier would be the first column, Freddie or Fannie, and then the respective series number. The CUSIP again. Then a series of prices based on different street firm price information that we were able to glean. Conversion of the prices based on expression to decimal form, and then an average in the far right-hand column.

Q. Let me see if we can take it a little more slowly so I can be more precise.

So the first column, the one with designators like FHLS231, those are designating whether it's Fannie or Freddie or the like?

A. Yes.

Q. Okay. And then the second column is the CUSIP?

A. Correct.

Q. And then I take it the third, fourth, fifth and sixth columns are prices?

A. Yes.

Q. Is that what you said?

Now, what is the source of the prices in the first column, do you know?

A. I'd have to double-check in terms

M. Slattery

of -- we have four broker firms. I'd have to double-check which column relates to which firm.

Q. What are the four firms?

A. Goldman, Citi, Credit Suisse and Lehman.

Q. And while you can't tell me which column is Goldman and which is Lehman, those four columns would be representing each of those four entities; is that right?

A. Correct. Correct. And then some instruments as listed, we only had observed prices from two or three of the four as opposed to all four.

Q. And that would account for any blanks that you see?

A. Correct. Correct.

Q. And then we have these decimal numbers in the next four columns?

A. Yes.

Q. Okay. And would the -- and what do those decimals represent?

A. Converting the price convention that's listed in, I guess, again, identified as columns 3, 4, 5 and 6, two decimal forms. So, for

M. Slattery

example, row 1: Freddie 231. The CUSIP 31282YDR7. Price of 21 and 26/32. So it would take the 21 plus 26 divided by 32 to come up with 21.8125.

Q. And then the final column "Price - 9/19/2008"?

A. Yes.

Q. What does that represent?

A. That's an average of the observed decimal form prices.

Q. It's a simple average, no weighting or anything like that?

A. No weighting. Weighting would suggest that we had a bias in terms of one particular street firm source versus another. So, in this case, averaging was appropriate because we had no particular bias one way or the other.

Q. All right. You can put that aside. Actually, let me --

(Exhibit 715B, a document produced as LEH-NAVIGANT 026178, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 715B. And I will represent to you that

M. Slattery

that is the document produced as LEH-NAVIGANT 026178. And just so we're clear, this is an excerpt or a truncated version?

A. Right.

Q. It should have all of the columns but does not have all of the rows.

Do you recognize this document?

A. I believe this is the, as I indicate at the top underneath the column called "User Description," this is the pair sort that we did to set the foundation for the spread determination on the majority of the 284 securities.

So I think the truncation of the rows, I would have a hard time adding or eyeballing how many rows are represented here, but at the end of the day, there was a few hundred.

Q. And what do you mean by "pair sort"?

A. What we're determining was the break-even what they call prepayment multiplier and break-even option adjusted spread. So we grouped instruments according to security types.

So, for example, the first two rows that are indicated, it's the same instrument,

M. Slattery

okay? It's the same CUSIP, same deal name, same additional tranche name in column 3, but in this case, we had -- I had scripted in an additional identifier such that the first one was actually sourced from Goldman, the second one was sourced from Lehman.

So the prices that are indicated in the one, two, three, four, five, six -- eighth column for this particular PO on the 19th of September, Goldman had a price of 73 and 14/32 and Lehman had a price of 73 and 15/32.

Q. Okay. And what does -- what does the "OAS" column signify?

A. That's the option adjusted spread.

Q. And what was the source of that?

A. That was determined based on the introduction of these prices. So, for example, again, using row 1 as the basis for the example.

Q. Uh-huh.

A. At a price of 73 and 14/32, given all the elements of the analytical configuration that we had in place, the option adjusted spread that was generated based on Polypaths, using Polypaths as the tool, was 57.9 given all the

M. Slattery

other attributes of this particular security.

Q. And just so I'm clear, the securities listed on this document, these were not in the population of securities that Barclays acquired; is that correct?

MR. TAMBE: Objection to form.

A. That -- some may have been. I mean, this was the master universe of our trust interest-only and trust principal-only security price set that we had. So, rather than limit our spread determination for creating proxy relationships to the other 284 majority of which, we felt that it was more appropriate to get as many prices as we could, expand the universe.

So there may be some direct relationship between what we have here and the broader extract, the entire extract, as opposed to this. I just can't see.

Q. Sure. Let me see if I'm understanding it correctly. You're saying that some or all of the 24 securities within the Barclays portfolio that you were able to identify prices for may show up on Exhibit 715B, but that it will also

M. Slattery

include a variety of other securities that are not within the Barclays portfolio?

A. To the best of my knowledge, yes.

Q. All right. And the column headed "OA Dur," do you see that?

A. Yes.

Q. What does that signify?

A. This is the duration measure or the risk sensitivity of that price given all the other elements of the value process. So, in other words, there -- "option adjusted duration" would suggest that there is a potential for a 12 percent change in value for a particular movement in rates given all the other fixed elements of the valuation process. That is what people would consider a risk metric, which was not part of the exercise, but allows the practitioner like myself to gain insights in terms of whether or not the production, the valuation engine is producing results in line with expectations.

Q. And what would be the source of the OA Dur entries that appear in that column?

A. They're not entries. They're

M. Slattery

analytical outputs.

Q. And in terms of -- you said that that's a risk metric; is that correct?

A. Yes. Some people may call it a risk metric.

Q. Would you?

A. Yes. Or exposure derivative.

Q. Okay. And what would you consider to be a high figure as opposed to a low figure, indicating more risk as opposed to less risk?

MR. TAMBE: Objection to form.

A. That would depend on the instrument, because the number could appear to be a negative as well as a positive.

Q. And so would a -- would a negative be associated with a higher degree of risk or --

A. Not necessarily, no. It would just -- a negative OA duration would relate to the underlying pay type. What we have on this extract, based on my limited time with it, it's all the principal-only -- or, not all, but it represents just an extract of principal-only securities. So I would expect the "Duration" column to be positive numbers.

M. Slattery

Q. So you think that these are positive numbers and not absolute values?

MR. TAMBE: Objection to the form of the question.

A. I'm not sure I understand.

Q. Whether the number's negative or positive, would a higher number indicate greater risk -- would, if you look at the absolute value of the number, so 12, negative 12, either way, would that indicate a higher risk than a 6 or negative 6, respectively?

MR. TAMBE: Object to form.

A. Within just simply the context of what this number represents, which is the price change for a given yield change or a price change for a given rate shock, a higher number would indicate that, yes, there is greater risk for a particular security and susceptibility to rate movements.

However, that's not the only dimension that one would look at in terms of determining whether or not it is a, ultimately a riskier security than some other security.

Q. What does the next column "OA Sprd

M. Slattery

Dur" indicate?

A. That -- option adjusted duration, the "OA Dur" column, again reflects changes to the underlying rate, discount rate. The "OA Spread Dur," for duration, represents changes to the OAS number, which is two columns to the left. So it's a measure of sensitivity to changes in the option adjusted spread.

Q. Going back to the "OAS" column, what are the units which those values are given?

A. Basis points.

Q. And the "OA Dur" column, what are the units those are given?

A. That would be typically interpreted as a percentage. So 12 percent. Same thing with the "Spread Dur."

Q. And the "Prepay Dur" column, what does that indicate?

A. That would be a exposure derivative or a risk metric that identifies the change in value for a given change to the prepayment model.

Q. And is that a calculated output rather than an input?

M. Slattery

A. Yes.

Q. And is the "OA Spread Dur" also a calculated output?

A. Yes. Yes.

Q. And the next column "LT. CPR"?

A. Yes.

Q. What is that column?

A. That represents the prepayment, the prospective prepayment number across the series of paths that are generated. So, for example, for the first line, 11 represents an 11 percent constant prepayment rate.

Q. And the source for that is what?

A. It's calculated by Polypaths. It's another calculation.

Q. And the next column, "ZVol Oas"?

A. If, internal to the system, if volatility is shut off or if volatility is reduced to zero, what is the quote/unquote option adjusted spread in that environment. And that's again in basis points.

Q. Is that a calculated value?

A. Calculated.

Q. Again through Polypaths?

M. Slattery

A. Yes.

Q. And "ZVol CPR"?

A. Similar to the "ZVol OAS" in that if volatility is shut off or brought down to zero, that would be the prepayment speed prospectively in that environment.

Q. Now, a minute ago I believe you said that the "OA Dur" column is not something you actually used in your -- in your calculation of values here; is that right?

A. Correct. These are byproducts of the valuation routines. It was used to the extent that we gained a sense of comfort with the model outputs based on the numbers as depicted in this one example.

Q. And would the same be true with respect to the next columns coming up, going up to "ZVol Oas"?

A. Correct. Beyond "ZVol CPR" is "AL," or average life. That would be, again, an indication of the average life of the cash flows, and that's typically interpreted in terms of years. So you can interpret that as 6.71 years. That's a calculated field as well.

M. Slattery

The next three would be underlying collateral descriptors that are grabbed from instrument, let's say in this first example, Freddie 234. So it has an underlying gross coupon of 5.361, an underlying weighted average life of 37 months, and a weighted average maturity of 317 months.

Q. And the final column?

A. The prepay multiplier is what the system is calculating based on generating spreads for this instrument consistent with its interest-only counterpart. So the order is custom designed. In other words, the layout is the way I laid it out. You can lay it out and order it any way you want.

Q. Uh-huh.

A. But there is a commingling of inputs, generated outputs, information descriptors, and then another generated output. So ...

Q. Okay. And you used the Polypaths model; is that correct?

A. Yes.

Q. Are there other models that are commonly used by banks in valuing these types of

M. Slattery

securities?

MR. TAMBE: Objection to form.

A. To the best of my knowledge, there are other models that are used, yes.

Q. And would it be fair to say you would expect some variability between the outputs from the various models?

A. I don't know if I would agree with that. If I put everything the same, in other words, if I align the inputs between model A and model B, the expectation would be that the variability would be minimized to a great extent, if not completely offset. There are subtleties within each model, each program that might create a difference, but if I align the inputs, I would expect that my variability between model A and model B would be, again, practically offset to zero.

Q. Go back to Exhibit 714B, please. Now, the prices that are shown on here, are these bid prices or ask prices or what?

A. We interpreted these as indicative prices, so we used them as mids.

Q. Are these all the prices on that date

M. Slattery

or some particular moment in time or what?

A. Based on our -- my understanding would be end of day for the 19th.

Q. And the --

A. I'm sorry. We used these as bids. We used these as bids.

Q. Bids.

Do you know what percentage of the entire population of RMBS Securities that Barclays acquired consisted of agency pools?

A. Straight agency pools? I don't know.

Q. When you say "straight agency pools," what are you differentiating them from?

A. Well, if I'm looking at a Freddie Mac 5 percent, without any other complications, I would consider that, just in a generic way, an agency pool. I don't know the answer. I don't know the breakout even more specifically than that either.

Q. Do you know what -- what discount rate Barclays -- what liquidity discount Barclays applied to the agency pools?

A. I don't know specifically. I'd have to double-check.

M. Slattery

Q. What about agency CMOs?

A. I believe they integrated a 10 percent liquidity discount.

Q. If you'll look at the section on the materials you relied on in the back of your report, so page 30 of your report, there are I think three, maybe four documents that are identified here as having been produced by PwC, do you see that? They're in the other documents category right at the end.

A. Yes.

Q. Okay. Aside from those three or four documents, did you review any documents relating to the PwC review of Barclays' valuation efforts?

MR. TAMBE: Objection to form of the question.

A. Did I review PwC's review of Barclays' valuation outside the scope of these four?

Q. Outside these, setting to one side these four documents that you say you relied on, did you look at any other documents concerning what PwC did in the course of reviewing Barclays' pricing or Barclays' valuation

M. Slattery

process?

A. Based on my recollection, I and my team looked at other potentially documents that were sourced from PwC, but in terms of material information, we obviously chose not to cite them because didn't use them.

Q. Can you tell me anything about the process that PwC went through to audit or test Barclays' pricing -- strike that.

Can you tell me whether you're aware if PwC's Structured Finance Group examined the Barclays valuation process for these -- for the securities that you valued?

A. I can't speak to it in a comprehensive way. I can only give you what we saw based on some of the documents cited. Again, I believe it's highlighted in the report.

I believe one of the PwC source documents indicated, as paragraph 39 suggests in my report, a description of the Barclays process.

Q. Are you referring to the second sentence of paragraph 39 where you say "according to Barclays' accountants"?

M. Slattery

A. Yes.

Q. What can you tell me about the process that PwC undertook to test the validity of Barclays' pricing or Barclays' valuation of the securities it received?

A. As I sit here I cannot offer any direct response to that. I don't know exactly what they followed and what the standards would be for that group. All I know is what we read based on some of the documents.

Q. When you say "based on some of the documents," you're referring to the four documents that are listed on your --

A. Yes.

Q. -- index of documents relied on; is that right?

A. Yes.

Q. In paragraph 34 of your report you state that you used empirical bid-offer spreads to derive liquidity discounts?

A. Yes.

Q. What do you mean by that?

A. We -- sorry.

Q. I was going to say, can you describe

M. Slattery

the process you went through?

A. We looked for and found, again, information based on normal versus stressed market conditions for mortgage-backed securities, agency mortgage-backed securities.

We, once again, used Fabozzi information for that, and based on direct information that one of my team members had during his time as an enterprise risk manager for Bank of America, we were able to create a more granular assessment of those implied liquidity haircuts on a pay-type-by-pay-type basis.

So, in contrast to a 10 percent level, which I believe was established by Barclays in the process, we had some pay types based on our findings that actually were more than 10 percent and then we had some that fell below 10 percent, so -- and I believe, on average, for the 308 securities, I believe at the end of the process on a weighted average basis, our liquidated discount approached 8 percent versus Barclays' 10 percent.

We, however, just had a more granular

M. Slattery

allocation of the liquidity discount based on pay type.

Q. While you're doing that, let me ask you, you said something about direct information that one of my team members had during his time as enterprise manager at Bank of America. What are you talking about?

A. In 2001, part of his responsibilities was to determine what the traders were -- felt comfortable with in terms of identifying stress levels for a variety of pay types, as more and more pay types were coming out in terms of the street and production and so forth and so on. So he memorialized that information at the time and then we continued to use that in our valuation.

Now, the distinction between 2001 and 2008, the liquidity for the market actually improved significantly between 2001 and 2008. So the stress levels that were obtained through that method in 2001 were probably, in my estimation, based on my opinion, would be more conservative than what traders would have expected during the mid part of this decade.

M. Slattery

And the other, in terms of Fabozzi, it was sourced back to 1997. But the information that we gleaned from that process, we understand it to be from the 1994 mortgage crisis, the Orange County bankruptcy. So we had that information, which represented a stress environment.

We had information gleaned from the Bank of America traders. We had an improving market for at least the first few years, earlier part of this decade, and then we allocated them across pay types, so ...

Q. And if I understood correctly what you said a minute ago, it's your opinion that liquidity in September of 2008 was better than in 2001?

A. No. What I said was the liquidity throughout from 2001 to 2008 was improving. So there was a greater issuance. The daily trading volumes had gone up at some point in 2008. I didn't reference a particular period.

Q. Okay. Well, do you have an opinion as to how liquidity in September of 2008 in this market compared to the earlier period 2001 that

M. Slattery

you were referring to?

A. Sure. 2008 for Agency RMBS, the liquidity was up. So the daily trading volumes were higher than --

Q. And just so I'm clear, I don't want to talk about 2008 as a whole.

A. Right.

Q. Right now I want to focus on September of 2008.

A. Right.

Q. Do you have an opinion as to how liquidity in September of 2008 compared to liquidity in 2001?

A. Yes, I do. The amount outstanding as of the end of the third quarter 2008, September 2008, was greater than what it was earlier in the decade, and the daily trading volumes for Agency RMBS and, correspondingly, Agency CMOs was higher.

Q. And that's just on an absolute dollar amount when you talk about volume?

A. Yes.

Q. And did you analyze it as a percentage of outstanding Agency RMBS securities trading in

M. Slattery

any given day?

A. On a unit basis, no. This is absolute dollar amounts.

Q. No, I didn't mean to distinguish between on a unit basis and dollar. What I meant was, if there's, just for illustrative purposes, a billion dollars of outstanding or $100 billion of outstanding Agency RMBS paper and 10 billion is trading daily in 2001, you've got 10 percent of outstanding volume being traded on a daily basis.

Do you have any idea how the percent, that percentage figure compared to, for 2001, compared to September 2008?

A. That metric I don't have off the top of my head. However, the outstandings grew during that period. Daily trading volume went up. I would have to double -- I would have to look at that metric to determine it. My guess is that the outstandings outpaced the daily trading volume, in other words, it was faster on the pure volume side than it was on the daily trading side. But on an absolute dollar basis, the daily trading was up.

M. Slattery

(Exhibit 716B, a document produced as LEH-NAVIGANT 026179, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 716B, and I will represent to you that that is a document produced as LEH-NAVIGANT 026179. I believe that is a complete document.

MR. TAMBE: A what document?

MR. SHAW: I believe it is the complete document.

Q. I ask you to tell me what this document is.

A. I don't know what this first page is. It just seems like it's a laundry list of agency debenture CUSIPs.

Q. What about the second page?

A. The second page represents various categories within the agency mortgage world, Treasuries and agency debenture world, and then, correspondingly, the liquidity discounts that we used in our work.

Q. Look at the first line under the -- under the headings.

A. Okay.

M. Slattery

Q. So looking at the asset subcategory ARM, you have a liquidity discount of .52 percent; is that correct?

A. Yes.

Q. What is the source for that .52 percent?

A. I would have to refer back to other working papers that I believe have been produced to walk you through that.

Q. Are these documents we've already looked at today?

A. No.

Q. Okay. Which document would that -- how would I go about determining which document we're talking about?

A. There was a, similar to the liquidity adjustment for the Treasury agency -- let me see. Maybe it's on the second page. No. It looks similar to this.

MR. TAMBE: What is "this"? Just tell the exhibit number.

THE WITNESS: Sorry. 710B. It's similar to 710B.

MR. SHAW: Well, that might then be an

M. Slattery

opportune time for us to take a lunch break and we'll see if we can find it over the lunch break.

All right. Why don't we go off the record and break for lunch.

THE VIDEOGRAPHER: The time is 12:34 P.M. We are now off the record.

(Luncheon recess.)

M. Slattery

AFTERNOON SESSION

THE VIDEOGRAPHER: The time is 1:20 P.M. We're now on the record.

(Exhibit 717B, a document bearing Bates Nos. LEH-NAVIGANT 026433, marked for identification, as of this date.)

MARK SLATTERY, resumed and testified further as follows:

EXAMINATION BY (Cont'd.)

MR. SHAW:

Q. Mr. Slattery, you recall before lunch we were looking for a document, and I would ask you whether document 717B is it.

A. Yes.

Q. Okay. So if you have, then, 717B and 716B out in front of you, specifically, the second page of 716B, let me ask you if you can explain to me how you calculated a .52 percent liquidity discount for ARMs.

A. On the ARM I don't see an immediate reconciliation between 716B and 717B, so I would have to do additional reconciliation work to figure out exactly why there's a couple basis point difference because the floaters in the

M. Slattery

ARMs in terms of pay dynamics, they're virtually the same, adjustable rate mortgages versus floaters. But if you want to use the next example, the inverse floaters as the derivation example, is that all right?

Q. Sure.

A. So 717B contains multiples obtained from a Fabozzi article again dovetailing back to 1997. These represent normal versus distressed market indications of bid-ask spreads. Based on my understanding of that article, it represented surveys of traders, again, Salomon Smith Barney and one other entity I don't remember off the top of my head, asking them for indications of normal versus distressed bid-ask spreads across a handful of mortgage products.

The 1994 Orange County bankruptcy, which was directly related to mortgage security investment, set the tone for the distressed market. So that was the history.

Q. Let me interrupt you there for a second, if you don't mind, just for clarification. Is your -- are you saying that the Fabozzi article used the 1994 Orange County

M. Slattery

problem as its example of a stressed market?

A. No. From what I understand, the --

MR. TAMBE: Object to form.

A. Sorry. From what I understand, the derivation of these numbers in conversations and surveys with the traders, their experience between a normal and a distressed market was highlighted by the 1994 Orange County mortgage event.

Q. All right. Continue with your answer then.

A. No problem. Okay.

The multiples in terms of the top series of rows are calculated by relaying distressed and dividing that number by normal. So in pass-through, a distressed bid-ask spread was represented to be .25 percent or, in terms of ticks, it would be 8/32. Dividing that by the normal of .06, you would end up with a multiple of 4.17.

And then you see there's an indication of other instrument types, adjustable rate mortgage, companion CMO or interest-only strip. To be conservative, we used the multiple that's

M. Slattery

represented by the interest-only strip comparison between a distressed market and a normal market. In other words, that 7.94 multiple was used to scale a variety of instrument-type bid-ask normal spreads to, correspondingly, bid-ask distressed levels.

Because we're going from mid to bid in our work, we took the bid-ask distressed level and divided it by two. So, for example, the inverse -- let's go back to the inverse floater on the previous example is listed as 4.21 percent, and you can see that for a bid-ask normal inverse floater, it was 1.06, the bid-ask distressed is 8.41. Dividing that by 2, you end up with 4.21 and there's some rounding in there.

Q. So let me make sure I understand what you're saying. You're saying that the Bank of America July 2001 figures indicated a bid-ask normal of 1.06 for inverse floaters?

A. Yes.

Q. And that you then multiplied that by the 7.94 number that you calculated using the Fabozzi numbers and then divided the result of that by 2 to reflect the fact that it was bid to

M. Slattery

mid rather than bid to ask?

A. Yes.

Q. Okay.

A. Yes. And as we discussed prior to the break, you can see that three instrument types actually generated based on this approach, bid to mid, distressed, liquidity factor adjustments of greater than 10 percent. So the inverse IO was 16.7 percent, which actually I believe, ironically, reconciles to the work that was indicated on one of the PwC documents.

So our inverse IO bid to mid distressed liquidity factor of 16.7 was very similar to the number that was indicated by PwC. The difference was that we've taken time to segregate pay types and create a more granular approach to the allocation of the mid to bid or bid to mid distressed adjustments.

So structured POs, for example, is 5.16 percent, where, compared to the work that was done, as far as we could tell, there was a 10 percent adjustment integrated in the Barclays work, so -- and when I weight these across the entire sample set of the instruments that are

M. Slattery

part of the report that we generated, the total bid to mid distressed on a weighted average basis adjustment was approximately 8 percent versus Barclays' 10 percent.

Q. And when you say a weighted average, how are you weighting the average?

A. Based on the face amounts. So the position weighting, we use dollar amounts. Because in the sample set of our 308 minus the 24 trust IOs and POs, for principal-only securities, structured POs, represented approximately a third, and then there was inverse IOs and inverse floaters and structured IOs. I think those four accounted for almost 80 percent of our 284 subset.

Q. And if you had included the 24 in that?

A. The 24, as indicated at the bottom portion of this exhibit, 717B, trust IOs we adjusted by 1.94 percent, trust POs at 1.35 percent. So when we compared the bid prices to bid and then actually mid to mid, the difference was primarily captured by a liquidity factor, liquidity factor differential.

M. Slattery

Q. So if I -- if I compare -- if I look at 716B, page 2, what you're telling me is if there's a -- if the same asset subcategory appears on 716B, page 2, as appears on the second part of the table on 717B, that's the source of the bid to mid or the liquidity discount; is that correct?

A. But for the caveat, I'm not familiar with the 716B. This is not necessarily work that I generated firsthand. This may have come out of the work and the support that was done on the third party pricing so that's why I can't reconcile the ARM 52 basis point liquidity discount, for example.

But the other ones where there's a direct relationship between the naming conventions and so forth, you're going to get a one-for-one comparison. Inverse floaters, the bid to mid distressed adjustment was 4.211 percent on 717, as is the case on 716.

Q. Can you tell me what accounts for the difference between the pass-through numbers on the two documents? On 717B the pass-throughs are at .12 and on 716B they're at .25.

M. Slattery

A. Again, there may have been a more conservative approach taken. I'm under the impression that this relates to the third party pricing.

Q. "This" being which one?

A. The 716. I apologize.

So I'd have to go back and foot every number to make sure exactly where the -- the derivation. But for the most part, 717B sets and establishes the foundation for 716B.

Q. And for pass-throughs do you know whether you used the .25 number that appears on 716B or the .12 number that appears on 717B as your liquidity discount?

A. I would have to double-check and get back to you. I don't know right off the top of my head.

Q. And if you see on 716B, there is a number that says "Treasuries, .09 percent." Tell me how that number was derived.

A. Again, I believe 716B is being sourced from the third party pricing work. I would have to examine exactly the derivation of that .09. That represents, in my estimation, 3/32,

M. Slattery

approximately.

Q. And are you able to tell me how the liquidity discounts shown on 716B for the agency debentures of various maturity or time and maturity -- times to maturity were calculated?

A. Yes. They go back to 710B.

Q. 710B being the other document that contains the Fabozzi numbers on it?

A. Correct. Two different markets, two different sets of data points.

Q. Okay. Can you explain to me why the liquidity discounts on 716B, from what you believe to be third party sources, would differ from those that you calculated on 717B?

A. Can you explain that one? I'm not sure where the comparison is.

Q. Well, for example, we just looked at pass-throughs. We have different numbers, and so my question is if these -- if the 716B numbers came from third party sources, why would they be different from what you have calculated on 717B?

MR. TAMBE: Object to form.

M. Slattery

A. Where we did not have a specific liquidity discount to be allocated within the third party pricing universe of approximately 6,000 CUSIPs, we used the Barclays liquidity discount. So we might source it back to Barclays.

Q. And that would appear where on 716B?

A. Again, without a hundred percent familiarity with 716B, I can only assume at this juncture that this is a third party pricing listing.

Q. How would you go finding out for sure what this is, 716B?

A. I would, if we had access to our data warehouse, which we don't, I would look at the data warehouse to figure out exactly what was allocated for these specific instrument types. So I would have to do more research directly within the database that we set up to handle this process.

Q. And do you know whether your data warehouse has been produced to us in this action?

A. I believe a meaningful extract was

M. Slattery

produced. I believe that was the production as of last night.

Q. That would be that spreadsheet that Mr. Tambe e-mailed to me last night, as you understand it?

A. As I understand it. I'm not a hundred percent sure that it would contain exactly this delineation, but I believe that represents the third party pricing extract or a spreadsheet that was derived from the data warehouse containing all the third party pricing marks.

Q. Are you saying that an RMBS price derived from third party pricing would have a liquidity discount different than the RMBS price in your sample?

A. If it was not represented by the laundry list here but was captured by a Barclays number, it's possible, yes. We wanted to be conservative in the estimation of that liquidity adjustment, so ...

Q. Under what circumstances exactly would you source from Barclays -- from Barclays' analysis for liquidity discounts?

A. In the 6,000 securities, it runs the

M. Slattery

gambit, not a complete gambit, but there are various instrument types represented in terms of categorization. So you might have Agency RMBS. You might have Treasuries. You might have agency debt securities. You might have other things like the Tanzanite Series 2005 Class 2 bond.

If we didn't have a specific liquidity discount as captured by one of these two documents, being 710B and 717B, we defaulted to the use or the integration of the Barclays liquidity discount. So if the example is the pass-through, the higher the liquidity discount the lower the value. So it would be a more conservative estimate, but ...

Q. Would you agree that IOs, POs and inverse IOs are relatively risky tranches of the CMBS -- rather, the RMBS universe?

MR. TAMBE: Objection to form.

A. No, I wouldn't necessarily outright agree. I would have to examine each case. If you're talking about trust IOs, interest-only securities, and principal-only securities versus structured interest-only and principal-only

M. Slattery

securities, again, it depends on the type of structured PO. For example, if it is a planned amortization class PO, then, actually, the prepayment risk represented by that instrument is less than the trust principal-only security.

Q. If an RMBS was on -- was in the population of securities that Barclays acquired in the December 22 settlement, do you know what liquidity discount sheet was used to value it?

A. Did you say December 22?

Q. I did.

A. The December dataset I don't have intimate knowledge and a depth of knowledge that would be even worth considering or offering at this point.

Q. Paragraph 36 of your report, sir. Now, you're referring here to -- and you might want to look at paragraph 35 as well.

A. Okay.

Q. You're referring to documentation from PwC. You see that?

A. Yes.

Q. Showing you what has previously been marked as Exhibit 643A in this case. Do you

M. Slattery

recognize this document as the PwC document you're referring to?

A. Yes, I believe that is the case.

Q. I'll note that you have a footnote cite to it which appears to have the same Bates number that the document I just handed you does. You see that?

A. Yes.

Q. Now, you say that -- you criticize Barclays for the method by which it compiled or concluded that there was an average of 10.55 percent; is that correct?

A. According to the document, that was the average.

Q. Well, taking a look at the second page of the document, of Exhibit 643A, you see that there are 39 samples and that -- I'm not asking you to redo the math, but that there's a calculated average of 10.55 percent bid-offer spread for agency CMOs, do you see that?

A. Yes, sir.

Q. And you say -- give me a moment. Sorry. Okay.

Paragraph 36, you state, "For example,

M. Slattery

Inverse IO securities comprised 51 percent of Barclays' benchmark portfolio." Do you see that?

A. Yes.

Q. When you talk about the benchmark portfolio, you're talking about the document you have in -- the 39 securities listed on Exhibit 643A, page 2; is that correct?

A. Yes.

Q. And if I understand correctly what you've done here, have you simply counted up the 39 and confirmed that 20 of them are inverse IOs and that's how you got to 51 percent?

A. I believe that's how we did the math, yes.

Q. Okay. Can you tell me what percentage on a -- what percentage of the total face value of the Agency CMOs that Barclays acquired in this transaction were inverse IOs?

A. I don't have a number or a list of percentages across the entire spectrum of Agency RMBS and the decomposition of that portfolio. So, therefore, I wouldn't be able to answer that question.

M. Slattery

Q. And I take it your answer would be the same with respect to IOs and POs?

A. Correct.

Q. Assume that more than 80 percent of the face value of the agency CMOs that Barclays acquired were in the IO -- inverse IO and PO categories. Would it, from your perspective, make sense to weight the average liquidity discount to take into account the fact that the overwhelming majority of the value is in the -- is in those categories?

MR. TAMBE: Objection to the form of the question.

A. I don't know if it is 80 percent. I would have to do the leg work again to derive those percentages, but I do not disagree that it would make sense, if you're looking to create a weighted average, that it should be sized by the position if you do not have a more granular take on the liquidity discounts across pay types.

Q. And are you offering the opinion that it is always inappropriate to, when valuing a large portfolio of securities, to look at them on a portfolio-wide basis rather than on a

M. Slattery

CUSIP-by-CUSIP basis?

A. Can you repeat that question?

Q. Sure. Are you offering the opinion that it is always inappropriate, when valuing a large portfolio of securities similar to the ones Barclays acquired here, to look at them on a portfolio-wide basis for purposes of valuation rather than on a CUSIP-by-CUSIP basis?

A. No. If there's a strong degree of homogeneity within the portfolio, no matter the size, a hundred dollars or a hundred billion dollars, if they are the same across the board, no matter how big the position is, then a portfolio level approach, in my opinion, would be appropriate, it would not be unreasonable.

However, within a context of a hundred securities, but there is a tremendous amount of variance within that hundred universe set, a hundred security universe, pay types, asset types, et cetera, I think it behooves the analyst or the valuator to dig deeper.

Q. And if I understand your criticism correctly, you criticize Barclays because, in your view, they should not have applied a 10

M. Slattery

percent liquidity discount to all of the Agency RMBS that they valued; is that correct?

A. Again, assuming for the moment that I am accurate in the assertion that 10 percent was across the board, I believe that the criticism deals directly with the idea that you do have enough of a distinction within the Agency RMBS world, pay types, for example, IOs versus POs, structured IOs versus trust IOs, support bonds, et cetera, that, in the optimal situation, you would -- I would recommend that you be more granular in the approach.

Q. Is the appropriate liquidity discount for any given CUSIP in any way impacted by the size of the position that one holds?

MR. TAMBE: Objection to the form.

A. Again, dealing with a hypothetical, if the position represents a significant percentage of the outstanding marketplace, it probably seems reasonable. However, say, for example, the Agency RMBS daily trading volumes of 300-plus-billion dollars, you would have to have a position that approaches that in order to effectively justify, in my opinion, such an

M. Slattery

approach.

Q. What about -- well, if I understood you correctly, you said if the entire marketplace is 300 billion. What if you have a very large percentage of any given CUSIP?

MR. TAMBE: Objection to form.

A. I don't -- I would not necessarily tend to think that it would, by default, be appropriate. It depends on the other market participants and their willingness. Maybe your -- maybe you have cornered the market in a particular commodity, let's say, to take it outside the bandwidth of Agency RMBS.

Q. Let's stay in the bandwidth of Agency RMBS?

A. Okay. If it's a particular CUSIP?

Q. Yes.

A. Let's say it's a principal-only mortgage-backed security. If you are Flagstar, for example, and you have a multi-billion-dollar servicing portfolio, it could be appropriate that that principal-only strip represents the best hedging vehicle. Therefore, they would probably pay up to the individual that may have

M. Slattery
cornered that particular CUSIP, as an example.
Q. Is the liquidity discount for a single given CUSIP in any way impacted by the concentration of the position?
A. What do you mean by "concentration"?
Q. Percentage of market ownership.
A. Correct me if I'm wrong. I thought that's where we just came from in terms of like if, say, for example, the total outstanding represented by a particular CUSIP is $100 million and market participant A or investor A owns $98 million of that CUSIP. It depends on the CUSIP, it depends on the market's appetite for that particular product.
Q. Meaning that -- strike that. Take a look at paragraph 40, if you would, sir. Actually, that's not the right one. Actually, let's look at paragraph 39.
You refer to the BlackRock prepayment model. Do you see that?
A. Yes.
Q. Okay. And then you say "based on my understanding of this analytical configuration." What's the source of your understanding?

M. Slattery
A. Well, my understanding of the sentence that I cite in the previous -- in, I guess, the second sentence of paragraph 39 would be my professional experience. If someone were to represent to me, another mortgage market participant, the same sentiment, I would interpret that as being a single-path approach, i.e., a static pricing approach.
Q. So I'm clear, then, are you saying that you know the BlackRock prepayment model to be a static model, or are you saying you think that it is?
A. In this case, it would be a thought. I don't know specific details. Again, it's based on my reaction or impression of that representation.
Q. So your understanding is that Barclays did not use a dynamic pricing model in valuing these securities, is that correct?
A. Based on my understanding of all the information that we've gathered to date, yes, that would be my understanding.
Q. Go to paragraph 37, if you would. You say that, "For example, Barclays claims that the

M. Slattery
bid-offer spread was approximately 16 percent for inverse IOs." Do you see that?
A. Yes.
Q. Are you contesting that claim?
MR. TAMBE: Objection to the form of the question.
A. In terms of contesting?
Q. Are you suggesting that approximately 16 percent is an inappropriate bid-offer spread for inverse IOs in that market?
A. No. In fact, I think if you will compare to 717B, that's exact -- well, I wouldn't say exact. As I mentioned earlier, the 16.2 percent as seemingly represented on the second page of 643A was very similar to our 16.67.
Q. Then the next sentence you say, "The majority of the other types of securities in Barclays' own benchmark portfolio had a bid-offer spread of approximately .03 percent."
How are you calculating that number, the majority?
A. The majority of the other types in this benchmark portfolio?

M. Slattery
Q. Yes, sir.
A. So let's say the other types are represented by maybe 18 or 19 securities. Based on a quick count, 13 of the other securities have a .03 percent bid-offer spread.
Q. So that's just a majority by counting up the number of CUSIPs?
A. Right.
Q. Correct? And it doesn't take into account the size of the position or the face value?
A. No. But one point to, for example, on the face amount on an interest-only security may not necessarily be the best proxy for weighting. The face amount of $70 million in the first example that's listed may be the more appropriate way but would be based on an actual value.
So the face amount of 70 represents -- maybe my impression is incorrect, but that would represent a nominal face amount. The value of an inverse IO might be significantly less. So that's just a point of clarification.
Q. Did you make any effort to break down

the portfolio by value to determine how the -- determine the composition of different types of Agency RMBS?

A. No.

MR. TAMBE: Objection to form.

A. I broke down the 308, but in terms of the aggregate RMBS universe, no.

Q. Now, in paragraph 39, your last sentence says -- actually, last two sentences you say, "This means that Barclays assumed a single set of cash flows and assigned a single discount rate to value each security."

How do you know that, sir?

A. Again, I would go back to my understanding of what I take from the analytical configuration as represented by the statement regarding Barclays using a discounted cash flow approach, incorporating the BlackRock prepayment model and an estimate of required market deals.

Q. And do you -- do you know what -- what other models Barclays may have used in the valuation process for these assets?

A. No --

MR. TAMBE: Objection to the form of

the question.

A. No, I do not.

Q. Did you at any point ask anyone to get you additional information like, for example, taking the deposition of any of the Barclays valuation professionals who worked on the valuation?

A. Did I request the deposition?

Q. Yes.

A. No. I requested on more than one occasion, just without having an exact number, I would say at least three or four times, for detailed analytical information to support or refute conclusions that I was drawing based on information that was available to me.

Q. And when you say you requested it, you mean you requested it of the counsel you were working for; is that correct?

A. That would be fair.

Q. Did you request that any information be gathered about PwC by taking the deposition of any of the people who audited the valuation process?

A. No, I didn't request any depositions

be taken.

Q. Did you ask for more information about the PwC auditing process?

A. I did not ask for more information of the PwC auditing process, no.

MR. TAMBE: Do you have more to produce?

MR. SHAW: I have auditors.

Q. Paragraph 42, you say, "For the remaining Agency RMBS that I valued, I used an industry standard and widely recognized valuation techniques to establish mid prices, i.e., prices midway between prevailing bids and offers." Do you see that?

A. Yes.

Q. And would it be fair to say that the mid prices you arrived at using that technique were not significantly different from the mid prices that Barclays arrived at in its valuation process?

A. I don't off the top of my head know that comparison. I would have to double-check.

Q. Did you look into how many of the agency securities fully performed by year-end?

MR. TAMBE: Objection to the form of the question.

A. "Year-end" you mean December of 2008?

Q. Yes, sir.

A. I did not look at performance prospectively except for one security.

Q. Which one was that?

A. I'd have to double-check my notes, but there was a significant difference in value between my value and that of Barclays, significant in the sense that I believe it was more than $50 million. So, from the standpoint of conservatism, I wanted to make sure that there wasn't something that I was misinterpreting in terms of the implications of the payments or the structure or anything dealing with the collateral of a particular CUSIP.

So I prospectively looked at the performance of that one CUSIP all the way through, up to and including January of 2010, and based on my findings, it looked as though the performance supported the value that I derived in September of 2008.

M. Slattery

Q. If I wanted to identify that particular CUSIP, how would I go about it?

A. I would look through my work papers, my support.

Q. Can you tell me specifically which document you would want to look at?

A. I would have to double-check. It's a spreadsheet.

Q. I'm going to show you now the exhibit that was marked earlier today as Exhibit 712B.

Actually, I'm sorry, that may not be the right exhibit. Yes, it is 712B, but it's not the first page.

I'd like you to take a look at the third page of this document, and as I understand it, we are now on a different tab of the spreadsheet that this entire document constitutes?

A. Yes.

Q. And again, this is one of the ones that has all of the -- all of the columns but not all of the rows.

A. Yes.

Q. Can you tell me whether this is the

M. Slattery

portion of that spreadsheet that would deal with your Agency RMBS valuations?

A. Not in its entirety. Again, the trust IOs and POs that are represented by the previous page in this handout, so those 24 reconciled at paragraph 41 of my report.

Q. Okay.

A. This --

Q. Let me ask my question, then.

A. Okay.

Q. What appears on the third page would be the backup for your valuation of the 284 RMBS, Agency RMBS?

A. I think for the overwhelming majority, yes.

Q. First column obviously is just CUSIP.

THE WITNESS: I'm sorry.

MR. SHAW: Are you all right?

THE WITNESS: Yes.

MR. SHAW: Do you need to take a break?

THE WITNESS: Do you mind for a second?

MR. SHAW: No, not at all.

M. Slattery

THE VIDEOGRAPHER: The time is 2:02. We are now off the record.

(Recess.)

THE VIDEOGRAPHER: This begins tape number 3 of the videotaped deposition of Mark Slattery. The time is 2:09 P.M. We're now on the record.

MR. SHAW: And just to clarify, we've been off the break. The witness has had reconstructive surgery on his knee three years ago, just felt a pain in his knee. That was the reason for the short break, but we're back on.

Thank you.

BY MR. SHAW:

Q. And you're feeling fine now, sir?

A. I appreciate it. Yes.

Q. So we were looking at Exhibit 712B, and specifically the third page, and I think we agreed the first column was just the CUSIPs.

The second column is the mid price?

A. Yes.

Q. Okay. And the source of the mid price there is what?

M. Slattery

A. We derived break-even spreads and prepayment multipliers, which are part of the spreadsheets that are indicated, I guess in technically columns 7 and 8 or 6 and 7 here.

MR. TAMBE: Which document?

THE WITNESS: In the same document that we're looking at.

MR. TAMBE: Okay.

A. So there are two spreadsheets identified. Those spreadsheets house spreads that were generated running a break-even analysis across a spectrum of hundreds of trust IOs and POs.

The spreads that were derived in that exercise were then allocated, based on a collateral consistency, to the underlying collateral for these CUSIPs. We then calculated the mid prices based on that combination of prepayment multiplier and break-even OAS.

We then introduced a liquidity factor to take the mid down to bid and reran the analysis to generate the OAS that's indicated in the far right-hand column, second one in from the left -- or right, the OAS bid. And these

M. Slattery
liquidity factors will go back to Exhibit 717B.
Q. And the two spreadsheets, do you know if those have been produced to us?
A. Yes.
Q. Yes, you know, or yes, they have been produced, or both?
A. "Yes" to both.
Q. And then you've got a column here "Prepayment Multiplier"; is that right?
A. Yes.
Q. And what was that used for?
A. That's, again, part of the break-even analysis. So we generated those from the trust IO and PO analysis and held that constant for both the mid and the bid calculations.
Q. And the source of that was?
A. They were derived with the analysis that's included in these two spreadsheets that you have been provided.
Q. If you look at the next page, just so that we can see that it was a complete -- it's a continuation horizontally, if we put the CUSIP column back in, you can see it's the same CUSIP that's at the top of each page?

M. Slattery
A. Yes.
Q. So the "Underlying Curve" column there?
A. Yes.
Q. That would be something you've gotten from Bloomberg?
A. Yes.
Q. And specifically what Bloomberg database did you get that from?
A. It was Bloomberg curve information, LIBOR curve, Treasury curve, futures prices, all as of the 19th of September 2008. We have a particular set of Bloomberg tickers that are used to extract the data, but it's the same curve information that you would otherwise use in virtually any system.
Q. And the next column, "Underlying Volatility," and again, that lists Bloomberg as the source. What Bloomberg database or item of information is that?
A. Two sets of volatility datasets there. Swaption volatilities and cap volatilities.
Q. Okay.
A. As of the 19th of September.

M. Slattery
Q. And then the final column is headed "Model Components" and it lists three models, I take it, Polypaths, AdCo and Intex?
A. Yes.
Q. And what was the Polypaths, what was the Polypaths model used for?
A. Polypaths was the rate engine. So, given the inputs in terms of the base yield curve and the volatilities, Polypaths presents us with an opportunity to run their rate engine, use their interface to load CUSIP level information, integrate a prepayment model like AdCo, also augment that by introducing the exact deal library information from Intex, and in combination, those three components produced the results.
Q. We can put that one aside for the moment.
Turning to paragraph 43 of your report, sir, and we've now entered into the world of non-Agency RMBS, I note that you say, "I independently valued 162 distinct non-Agency RMBS."
And would I be correct in surmising

M. Slattery
that those are the 162 that met your million-dollar variance between BoNY and Barclays' prices?
A. Yes.
Q. Now, in this report category, is this just CMOs or does it also include other home equity ABS?
A. No, these are just non-Agency RMBS.
Q. In paragraph 44 you note that you segregated these into two categories, stripped and non-stripped; is that correct?
A. Yes.
Q. And why did you do that?
A. As I indicate in the report, the main driver for the stripped non-Agency RMBS, in light of all the credit concerns, was still going to be the prepayment driver because these are interest-only and principal-only.
We did evaluate the underlying credits and ascertained that, across the vast majority of the 37 securities that are private label interest-only and principal-only securities that we valued, virtually all of them were triple-A at as of September 19, 2008. They also

M. Slattery

contained average FICO scores, which reflect the credit quality of the underlying borrower, in excess of 700. So they were not sub-prime.

So we chose to take those because of their prepayment characteristics, and that being a main valuation driver, and we segregated those from the remaining 125, which dealt more with the credit components and the credit valuation work attributed to the valuation.

Q. Now, there were interest-only and principal-only securities in the population of Agency RMBS, right?

A. Yes.

Q. Why did you not perform the same sort of allocation with respect to those?

MR. TAMBE: Object to the form.

Go ahead.

Q. As between stripped and non-stripped?

A. Everything was stripped but for, again, a handful of the Agency RMBS that we valued. The overwhelming majority would be IOs and POs in some form. The delineation was not warranted.

Q. If you can pull back Exhibit 712B,

M. Slattery

please, and this time we're going to turn to the page that begins with the CUSIP 02150NAY9.

A. Yes.

Q. You see that?

A. Yes.

Q. And this is a group of 37 securities; is that correct?

A. Yes.

Q. And do you understand that to be the category of the stripped non-Agency RMBS?

A. Yes.

Q. If you could tell me, sir, the first column is just the CUSIP. The second column is the mid price?

A. Uh-huh.

Q. And how did you derive that?

A. The mid was established in the same way that the Agency RMBS mid prices were in that we allocated break-even spreads from an extensive examination of trust IOs and POs based on a collateral consistency to the individual collateral types underlying these CUSIPs. So...

Q. And when you say "collateral consistency," you're talking about what?

M. Slattery

A. Weighted average coupon and weighted average maturity. Since we did examine the creditworthiness of these particular bonds, these securities, and we were able to ascertain that, as of September 2008, the overwhelming majority was triple-A, and also, as of September 2008, the overwhelming majority had a FICO or a credit component score of in excess of 700.

Q. And the next column is headed "Liquidity Factor." Is that your liquidity discount?

A. Yes.

Q. And how did you derive those?

A. This was based on a comparison of -- I'm just going to look for the -- the paragraph was 45, the last sentence. We looked at jumbo RMBS, which, by default, are categorized as non-Agency RMBS versus prime conventional conforming Agency RMBS, with similar characteristics as of September 2008 to arrive at a liquidity factor that ranged between 15 and 20 percent.

Q. Okay. And is there a detailed backup for that analysis anywhere in your work papers?

M. Slattery

A. I would have to double-check on that.

Q. Okay.

MR. SHAW: If there is such an analysis, we would appreciate it if you would identify it to us.

Q. Is there a detailed backup for the mid price calculation that you have --

A. Yes.

Q. -- that you give on this sheet?

And where would that be?

A. The approach that you would have to take, again, that all the spread information supporting the mids would be part of the two spreadsheets that have already been produced.

Q. And those are the two spreadsheets that are identified on the column headed "Spreadsheets" here on this page?

A. Yes, column 6 and 7. Again, it's -- the same foundation was laid for these, despite the fact that they were non-agency, that they, again, passed two critical tests in our mind in terms of rating and FICO score as of the valuation date.

So after applying the liquidity

M. Slattery
factor, simply taking the mid times the factor to arrive at a bid, we reran the analysis, and then you're going to have the same outcome in the sense that the option adjusted spread bid column, which is to the far right, one column in, would be related to the bid.

Q. And is it your understanding that the two spreadsheets would preserve your calculations with respect to each of the CUSIPs you valued here?

A. It would be --

MR. TAMBE: Objection to the form of the question.

You can answer.

A. Can you repeat the question?

Q. Sure. Is it your understanding that between the two spreadsheets identified on the spreadsheet columns on this page of Exhibit 712B, that the calculation work that you did to derive midpoint prices would be preserved for each CUSIP?

A. Yes, I believe that is the case. Within the spreadsheets you may not see a laundry list of CUSIPs. You would see

M. Slattery
collateral. So there is a matrix of collateral which would then tie back to the individual CUSIPs.

Q. Okay. So if I understand correctly, the spreadsheets are the nature of models that rely on this matrix of information; is that correct?

A. Let me just clarify in terms of response.

Q. Sure.

A. These two break-even spreadsheets as highlighted around the agency and non-agency sheets in this particular exhibit, they include all the spreads that were calculated across a varied matrix of weighted average coupon and weighted average maturity.

That information is assigned based on a combination of weighted average coupon and weighted average maturity. Analytically, there may be another spreadsheet that shows the results from Polypaths that reconciled the mid based on the spreads, but ultimate derivation of the OAS bids are supported by these two spreadsheets. In other words, there's nothing

M. Slattery
lacking other than additional Polypaths output.

Q. And how would I go about tying back the results that are contained on either of those spreadsheets to a particular CUSIP?

A. Identify the weighted average coupon and the weighted average maturity, as an example, at 715B. You would have those two identifiers on a CUSIP-level-basis and you would be able to allocate the spreads contained on these two spreadsheets to that CUSIP based on the intersection again of coupon and maturity.

Q. And did you anywhere preserve the outputs for each of the CUSIPs as opposed to the means by which those outputs were derived?

A. Yes, I did.

Q. And where would that be found?

A. In my -- on my laptop.

Q. Okay. Has that information been produced?

A. No.

MR. SHAW: Okay. We would ask that that be produced to us.

Q. What else is on your laptop that you relied on in reaching the opinions you express

M. Slattery
here that has not been produced to us yet?

MR. TAMBE: Objection to the form of the question.

A. There are other spreadsheets and documents, research material that supported my work, but in terms of deriving these spreads, nothing directly.

Q. Well, when you say it supported your work, you mean it's material that you relied on in reaching the opinions that you are expressing in this litigation?

MR. TAMBE: Objection to the form of the question.

A. No. Other than the requested spreadsheets through the course of this deposition and these spreadsheets, you would have everything that I relied on.

Q. Will you turn for a second to the resumé portion, the curriculum vitae portion of your -- of your report.

I believe you testified earlier today that the only work you've done while at Navigant Economics is work on this case; is that correct?

A. Yes.

M. Slattery

Q. Okay. And if you look at the second bullet point, you say, "Lead all aspects of related effort ranging from implementing requisite analytical configuration to writing papers intended to describe model specifications." You see that?

A. Yes.

Q. What do you mean by "writing papers intended to describe model specifications"?

A. Papers that were used as an initial description of the model components that were part of our analytical configuration.

Q. And when did you prepare those papers?

A. During the course of the 12 or so weeks.

Q. Do you know whether those papers have been produced?

A. I'm not aware.

MR. SHAW: Well, we would ask that those be produced to us as well.

MR. TAMBE: If that is consistent with the stipulation we have entered into, we will produce them. Otherwise, we won't.

Q. Looking at paragraph 45, the last

M. Slattery

sentence, you write, "The amount of the liquidity discount in percentage terms was based on the difference between the price of select non-Agency RMBS and Agency RMBS with similar characteristics as of the valuation date." Do you see that?

A. Yes.

Q. What do you mean by that?

A. This refers back to the jumbo mortgages versus the prime convention conforming mortgage-backed securities to support the liquidity factor of 15 to 20 percent.

Q. Moving to the first sentence of paragraph 46, you say, "Material public information exists for an overwhelming majority of these credit-sensitive non-Agency RMBS." You see that?

A. Yes.

Q. What are you -- what constitutes an overwhelming majority?

A. Percentage-wise?

Q. Yes.

A. Almost a hundred percent.

Q. And what do you mean by "material

M. Slattery

public information"?

A. I think we highlight it in the remaining sentences within the paragraph, specifically, the remittance report, which comes out monthly.

Q. And when you talk about these credit-sensitive non-Agency RMBS, you're talking about IOs and POs?

A. No.

Q. Which ones are you talking about?

A. We're talking about non-interest-only and principal-only strips. We're talking about --

Q. So the non-stripped?

A. Yes.

Q. In determining the liquidity discounts that you applied to these securities, and by that I mean the non-Agency RMBS that you valued, did you take into account the fact that, with respect to some them, the issuer was Lehman or Lehman-related?

MR. TAMBE: Objection to the form of the question.

A. For which segment of the non-agency?

M. Slattery

All of them or --

Q. For any of the non-agency, yes.

A. We did not specifically adjust liquidity factor based on Lehman being, let's say, the shelf or the originator of the mortgage product. For the 125 credit-sensitive non-Agency RMBS we used Barclays' liquidity factor. So if that factor included a Lehman adjustment, then, by implication, we did.

Q. In the paragraph 46, you talk about the remittance reports, and if I'm reading this correctly, you are -- you're saying you did not look at the September 2008 remittance reports because they came out after the date you paid for the valuation date; is that correct?

A. For the majority of the instruments in this 125 security set, yes, because the pay date and the remittance report date would be the 25th. So approximately one week after.

Q. Do you know how many of them you -- strike that. So would that mean that the last remittance report you looked at for those would have the been the 8/25 remittance report?

A. For the majority of those that do pay

M. Slattery

out on the 25th, yes.
Q. And when did you look at those?
A. When in terms of throughout the process?
Q. Yes.
A. During the course of January and February would be an approximate guess.
Q. And it's your understanding that the data on those reports is the same as it would have been had you looked at versions pulled in September of 2008?
A. Are you asking if the August 25, 2008 remittance reports that we looked at this winter would be the same as those that would be presented on August 25 of 2008?
Q. Yes.
A. Unless the Trustee indicated that there was some reason or causation for a change, yes, it would be the same.
Q. Is it your understanding that the most current information regarding the payment and collateral performance available to the market on either September 19 or September 22 would have been the August 25 reports that you looked

M. Slattery

at?
A. For the majority of these securities that would be the case, yes.
Q. And so you assumed that the market was not pricing into these securities any information concerning payments or collateral performance that postdated the August 25 reports, is that correct?
MR. TAMBE: Objection to the form of the question.
A. I don't know what the rest of the market participants were doing.
Q. Now, in the next paragraph you talk about the use of ex-post pricing, which you characterize as inappropriate, as market conditions change over time.
If you got a particular trade price at 12:02 A.M. on the 22nd, would you view that as information that you should or should not consider in pricing the securities that you priced?
MR. TAMBE: Objection to the form of the question.
A. Based on my understanding of the scope

M. Slattery

of the work and based on my understanding of the transaction, the 12:02 A.M. price would be outside the scope.
Q. That would be true, in your opinion, whether or not you had a September 19 price for a particular security?
A. Can you rephrase that question?
Q. Sure. Some of the securities that you looked at traded on September 19, others did not, correct?
A. I'm not sure if they traded on the 19th or not.
Q. Well, you were unable to find prices for some of them on the 19th, is that fair?
A. Yes.
Q. And so if you had no price information for a particular security on the 19th and you got price information at 12:02 A.M. on the 22nd, if I understand you correctly, you're saying that you would not consider the 12:02 9/22 information in the valuation of that security; is that correct?
MR. TAMBE: Objection to the form of the question.

M. Slattery

A. Yes, I would not consider it.
Q. Are you an accountant, sir?
A. No.
Q. Are you an expert on fair value valuation?
MR. TAMBE: Objection to the form of the question.
A. If the fair value within the context of accounting, I'm not an accountant, as I just stated. In terms of arriving at fair value based on my understanding of the definition, I feel as though I am an expert, yes.
Q. Paragraph 48, sir, there's a sentence that begins, "In addition, when measured against Barclays' only internal marks, the resulting loss on these securities signifies a fire sale and/or sales to internal trading desks at deeply discounted prices." Do you see that?
A. Yes.
Q. What are you referring to when you say "the resulting loss"?
A. I think the -- the difference between the acquisition price and the sales price.
Q. And how are you defining the

M. Slattery

acquisition price?

A. I'd have to double-check exactly the comparisons that we're making there, but --

Q. Well, that's what I'm asking, is what comparison are you making there?

A. Well, the comparison between the sales price and the Barclays internal marks is the comparison.

Q. Which Barclays internal marks?

A. I'd have to double-check my work.

Q. What is your basis for asserting that there were sales to internal trading desks at deeply discounted prices?

A. Based on the difference, it's an assertion. I don't know exactly, we could not determine exactly who was the buyer of those securities.

Q. Setting to one side who precisely the buyer is, what is your basis for asserting that there were deeply discounted prices received by Barclays on the sale of -- of securities?

A. I think you're referencing the comparison between Barclays' marks and the actual sales prices. That represented the deep

M. Slattery

discount.

Q. Okay. And what I'm trying to understand is what Barclays marks are you looking at to reach that determination?

A. Again, I'd have to double-check my work.

Q. Where would you go to look?

A. Go back to the work on my PC.

Q. So, again, this is -- this is more information that's on your personal computer that has not been produced?

A. It's just a reference to the internal marks. I would --

MR. TAMBE: Objection to the form of the question.

You can answer.

Q. Well, which set of internal marks are you referring to? That's what I'm trying to understand.

A. Again, I would have to double-check. At this point, as I sit here, I don't have the exact recollection.

Q. How are you distinguishing between a fire sale and a sale at a deeply discounted

M. Slattery

price in that sentence, if you are in fact distinguishing between the two?

A. I don't think there is necessarily a distinguishing. I think the -- we said "and/or." I don't think there is a distinguishing element to that.

Q. I take it you couldn't tell me what -- what precisely you're referring to when you talk about a fire sale price either?

A. As I sit here, a fire sale in this context, no.

Q. Paragraph 49, first sentence, sir, you say you used the Intex deal library. Can you tell me when you looked at the Intex deal library and pulled up the data that you looked at?

A. Over the course of the 12 weeks or whatever it's been during this period.

Q. So at some point in 2010?

A. Yes.

Q. And do you know if the Intex reports you looked at were identical to the Intex reports you would have seen had you pulled them on September 19, 2008?

M. Slattery

A. I expect that they would be the same. If there were updates that were included in the Intex deal library, then I wouldn't necessarily see those.

Q. Okay. And then in the next sentence you talk about -- about -- or, you reference "contemporaneous research to develop an appropriate loss curve and industry standard ABX indices to arrive at an appropriate discount rate."

A. Uh-huh.

Q. When did you look at those materials? Again in 2010?

A. In 2010. As of September 19, yes.

Q. And I take it, again, you're not able to tell me whether those would be identical to what you would have pulled, or had you pulled them, on September 19, 2008?

MR. TAMBE: Object to form.

A. I don't necessarily agree with you on that particular statement to the extent -- or question to the extent that the ABX index prices were what they were as of the 19th.

Q. Last sentence of paragraph 49, sir, it

M. Slattery

says, "Finally, to be conservative, I applied an additional liquidity discount to derive my final values."

How did you calculate that additional liquidity discount?

A. That was the Barclays liquidity discount.

Q. Why did you use the Barclays liquidity discount rather than the 15 to 20 percent discount you used on other non-Agency RMBS securities?

A. Distinguishing between credit-sensitive and interest-rate-sensitive, we wanted to be conservative and use the Barclays liquidity discount for the credit-sensitive piece. We just didn't feel that we had research that would support a difference or a distinguishing factor.

Q. How are you defining "credit-sensitive" in that context?

A. Credit-sensitive would be those 125 securities that were not part of the interest-only and principal-only non-Agency RMBS. So we viewed those within the context of

M. Slattery

more of a delinquency loss or roll rate valuation framework as opposed to a stochastic process that is prepayment-driven.

Q. What is a reperforming RMBS.

A. A reperforming?

Q. Yes.

A. Based on my understanding, that would be -- you have performing and then reperforming. My assumption would be that it's an instrument that has been cured in some sense.

Q. Are reperform RMBSs more or less liquid than other RMBSs?

A. I don't know the answer to that question.

Q. In performing the valuations that you have outlined in your report, did you in any way take into account the fact that some of the securities were reperforming RMBSs?

A. I don't know that answer.

Q. Do you even know if there were any reperforming RMBSs in the collateral that Barclays received?

A. As I sit here today, I don't know. Especially within the 125 securities. Maybe

M. Slattery

within the broader universe.

Q. Just so I'm clear, you don't know one way or the other whether there were reperforming RMBSs in either the 125 or the broader universe; is that correct?

A. Correct.

Q. In the context of a reperforming RMBS, would it make any difference if the issuer were a Lehman-related entity?

A. I'd have to do the research to determine that conclusively. I don't know as I sit here.

MR. SHAW: Why don't we take five minutes.

MR. TAMBE: Do you have any sense generally of time?

MR. SHAW: I'm thinking wind up by 5-ish.

MR. TAMBE: Okay.

MR. SHAW: I don't see us being here at 8 o'clock tonight or anything like that.

THE VIDEOGRAPHER: The time is 2:48 P.M. We're now off the record.

(Recess.)

M. Slattery

THE VIDEOGRAPHER: The time is 2:57 P.M. We're now on the record.

BY MR. SHAW:

Q. Mr. Slattery, I just wanted to go back for a minute to a sentence at the end of paragraph 45, and I just want to clarify, is there somewhere in your work papers that you believe I would be able to find the backup for the calculations of the liquidity discounts that you refer to in that sentence?

A. Yes.

Q. And where would that be?

A. They would be still -- I don't believe those have been provided.

(Exhibit 718B, a document produced as LEH-NAVIGANT 026203, marked for identification, as of this date.)

Q. Showing you, sir, what has been marked as Exhibit 718B. And I'll represent to you that that is what was produced with the Bates number LEH-NAVIGANT 026203. I'll ask you if you can tell me what this document is, sir.

A. This is in its entirety?

Q. I believe that it is, yes.

M. Slattery

A. I believe it's only a segment of the non-Agency RMBS CUSIPs, so -- and there's --

Q. I could be wrong about whether this is a complete document.

MS. DAVIS: There's supposed to be 125 CUSIPs.

THE WITNESS: Right.

Q. So, yes, this would have all of the -- all of the columns, but perhaps not all of the rows.

A. Okay. Then "CUSIP," "CP Price," Chicago Partners, "Intex Factor," based on the corresponding factor date, so the August 25 date, variety of different bond types, and the underlying collateral for each one would be a prime, sub-prime, Alt A. "Location," I believe that relates back to the 86B spreadsheet. So, again, this is only a segment or a portion of the 125 securities.

Q. Okay. And when you say the 125 securities, you're talking about the 125 non-Agency RMBS securities?

A. The credit-sensitive non-Agency RMBS.

Q. And the column that is headed "CP

M. Slattery

Price," Chicago Partners price, is that your derived valuation?

A. Mid, yes.

Q. Mid price. And what is meant by "Intex Factor"?

A. That would be the outstanding pool factor for the particular bond. If you see a 1, that means the original principal balance at issuance is the same as the current principal balance, i.e., there's been no amortization or reduction. Anything less than 1, and it runs the gamut here, at least on this one, all the way down to -- I can't see what the lowest -- maybe a .39.

There are also some, due to negative amortization, that the factor actually exceeds 1.

Q. And what date was the Intex factor looked at? Strike that.

The Intex factor that's reported here, is that as of the date listed in the "Factor Date" column?

A. No, if I understand your question correctly. We looked at this during the course

M. Slattery

of the work, the 12 weeks,2010. The "Intex Factor" corresponds to the factor date that's listed, but the work was done during 2008.

Q. Right. I actually was not asking when you looked at it.

A. Okay.

Q. I was asking the other part of that question, which was, this is the Intex factor as reported as of August 25, 2008 for each of these securities?

A. Yes, and then it would be the same factor as of 9/19/2008 because you're in between -- you're inside a remittance cycle. So the factor would presumably change maybe, maybe not, once the 9/25 date rolls around.

(Exhibit 719B, a document headed LehBar_RMBS_111, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 719B, sir, can you tell me what this document is?

A. This is work product from us. Did it get truncated again as far as the --

Q. Yes.

M. Slattery

A. This is a more detailed look at each one of the CUSIPs that were just represented or reviewed on 718B, so additional information and observed metrics such as prepayments, loss, delinquency, cumulative loss, loss last period.

I'm just going across the columns.

Q. Uh-huh.

A. And I think, in aggregate, you're looking at four sheets that would represent all the columns, maybe five, reading from left to right.

Q. Okay. I don't think we need to go through each of those columns. Right after the four or five sheets with the columns on it, there's a page that's got a title "September 19, 2008 Roll Rates"?

A. Uh-huh.

Q. What is that page showing us?

A. This is segregating various types of collateral and various vintages. As you see on the far left-hand column there's a different collateral, prime versus Alt A versus sub-prime, also high LTV, loan to value, scratched and dented, second lien.

M. Slattery

Then the third column is the vintage, in other words, that would be the origination year. So, based on information in the first block -- you can see we sort of blocked it off -- there's information about calculated defaults versus projected cum. losses from JPMorgan securitized product weekly. Then we have average calculations for other sort of subcategories in this spreadsheet.

We're trying to segregate between collateral types and vintages the projected default rates.

Q. And why were you looking to do that?

A. Because we needed to introduce a default rate component for these credit-sensitive instruments, and that is captured in a single rate based on the third page. So you have to go back, and there's a column called "aggMDR Curve." That would be the monthly default rate. And if you go to that particular cell in the spreadsheet itself and click on it, it actually is a memo field. So you actually have an entire array of calculated numbers, not just -- the number that's shown

M. Slattery

here is just based on the printout, but inside each cell depends on the expected life of the instrument, it may be 80 numbers, there may be 120, there may be 300, but you would have to click on each one of those fields to identify the monthly default rate curve, which was loaded into Intex to perform the calculations.

Q. Going back to the page with the "September 19, 2008 Roll Rates" at the top of it?

A. Uh-huh.

Q. There's a column marked "Current" or headed "Current." What does that indicate?

A. That would be performing percentage that would roll to the next category. So, for example, the first -- let's take the second row, the prime fixed 2005 vintage.

Q. Uh-huh.

A. You have a current 3 percent number. It's expected that for the next month 3 percent of that current population would roll into a delinquency status and then you would have the delinquency statuses rolling forward. 30, 60, 90 represents the days delinquent. So you would

M. Slattery

have one month, two months, three months.

The "F/C" column represents foreclosure, so that would be after the instrument is clearly identified as part of the seriously delinquent, non-performing category, and then "Real Estate Owned" would be after the home was reposed by the lender.

Q. And the "-20% HPA Severity" column?

A. Okay. We assumed, based on information from JPMorgan, that the projected housing price appreciation, that is, the increase in home values or decrease in home values, we accepted their number at -20 percent. So as -- as of September 19, 2008, the projection was that the housing prices would go down 20 percent perfect annum.

The severity represents, once the home is actually in REO, how much loss would be attributed to the disposition of the underlying collateral. So if you had a $100,000 outstanding loan on a property and the severity was 10 percent, you would experience a $10,000 loss.

Q. So if we move down to the bottom of

M. Slattery

the section where they're boxed in under "Current" and look at the Alt A option ARM 2007 vintage, do you see that?

A. (Witness nods.)

Q. Where the "Current" column is 50 percent, does that mean that over the next month it's expected that 50 percent of the borrowers will be delinquent?

A. Would come -- would emerge as at least one month delinquent. And then the ultimate number, as far as what impact the collateral performance has on the structure that represents the home of the security, would be in the "Cum. Loss" column. So for that Alt A option ARM 2007 vintage, the loss would be 25 percent.

So if the underlying collateral was $100 million, at the end, you would only have $75 million of collateral. Depending on the bonds and the position held within the structure, that would be your pay-off.

Q. Let's go back to our old friend Exhibit 712B, sir.

A. Okay.

Q. Actually, we've already covered that

M. Slattery

section of that so let's leave that alone.

Looking at -- let's move now to the Section D of your report on page 18. Paragraph 51, sir, you state that, "Barclays did not provide details or analysis in support its modeling of CLO securities." Where did you look?

A. We looked across a massive dataset that was provided.

Q. Did you request at any point that anyone from Barclays be deposed or interviewed to determine how they had done their analysis or done their modeling of CLO securities?

A. I did not.

Q. Paragraph 53, you talk about a discount rate that you applied. What was that discount rate?

A. It was actually a margin. I'd have to look at each one of the CUSIPs, each one of the deals to identify the exact discount margin.

Q. And where would I go to look at that on each of those?

A. I believe that's been provided. I just, off the top of my head, I'm not exactly --

M. Slattery

I don't remember exactly which sheet.

MR. SHAW: We would ask that if you can identify for us, Jay, the -- the document where that information is provided.

MS. STROHBEHN: I think it is either LEH-NAVIGANT 017229 or 017269.

MR. SHAW: Thank you.

Q. You then say, "I then applied an additional liquidity discount to provide my final CLO values." Do you see that?

A. Yes.

Q. What was the source of that additional liquidity discount?

A. We used your discount.

Q. And when you say mine, you mean Barclays' discount?

A. Barclays' discount. I apologize.

Q. Then there is what appears in my copy of your report as -- looks like a heading, but it appears to have been intended to be a paragraph of text, perhaps. "Barclays values as of September 19, 2008, were very similar to the values that I calculated; however, Barclays failed to demonstrate any basis or analytical

M. Slattery

justification for taking a 21 percent discount to arrive at their exit value."

Are we still talking about the six CLOs that were valuing here?

A. Yes.

Q. Did you attempt to calculate an appropriate liquidity discount for those securities?

A. No, we used yours. We used Barclays'.

Q. So do you disagree with the 21 percent discount rate that Barclays used?

A. We did not determine our own. We didn't have justification to support the Barclays discount value, but we chose to use it for conservatism.

MR. TAMBE: I'm not sure that that paragraph's in the right place, frankly. It doesn't make any sense. 53 and that paragraph don't fit together. You can ask him, but I think it's a typo. I'm not sure, but I --

MR. SHAW: I guess that's what I'm asking.

MR. TAMBE: Yes.

M. Slattery

Q. Do you know where that paragraph is supposed to fit in your report?

A. It's in this section. We wanted to note that we could not find support for the 21 percent discount, but we did use it.

Q. And so you don't -- while you don't, perhaps, endorse that 21 percent, you also do not have any basis to contest it, I take it?

A. That would be fair.

Q. Let's skip to paragraph 66 of your report and we'll come back to the Pine CLO.

It says here you independently valued 30 CDO and CMBS. Were those the 30 CDO and CMBS that match your $1 million variation between Barclays and BoNY valuations?

A. Yes.

Q. And where would I find your backup for the work that you did on those?

MS. STROHBEHN: It's also among the produced documents as Bates numbers, I believe, LEH-NAVIGANT, this is, I believe, 26181 and 26182, is my understanding.

MR. SHAW: Let's confirm that understanding.

M. Slattery

(Exhibit 720B, a document produced as LEH-NAVIGANT 026181, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 720B. I'll represent to you that that is what was produced as LEH-NAVIGANT 026181, and can you tell me what this document is, sir?

A. This document contains the non-Pine -- I'm sorry, this is the CDO portfolio that we valued.

Q. Looking at the first page of this document, sir, and looking at CUSIP number 056166AC5, you see that appears a couple places?

A. Yes.

Q. Okay. Looking at the second instance where that appears, do you see that BoNY appears to have valued that at 35.08?

A. Yes.

Q. And Barclays at 26.31, and you valued it at 77.1395, do you see that?

A. Yes.

Q. Did you investigate the reasons for the fairly wide disparity between both -- between your mark and both BoNY's marks and

M. Slattery

Barclays' marks?

A. This particular series of instruments I relied on my staff to value. So, in direct answer to your question, I did not personally.

Q. Well, do you know if your staff looked into that?

A. I would have to check.

Q. And I see that there are a couple of others where you come to substantially different results than BoNY does. Do you see that?

A. (Witness nods.)

MR. TAMBE: Objection to the form.

Q. You nodded, I think, but you didn't say yes or no.

A. Yes, I can see that there are differences between the series of marks and BoNY and CP.

Q. I take it with respect to those you wouldn't be able to, as you sit here today, explain the discrepancy?

A. Yes.

Q. Can you describe for us the process that your staff used to value these CDOs?

A. They used Intex in their cash flow

M. Slattery

discovery process, and in terms of the discount rate, I believe they used market discount rates, where appropriate, to value the cash flows that were used -- Intex was used to generate.

Q. And do you know where they got those discount rates?

A. I do not at this point.

Q. Do you know what discount factor they used?

A. Since they used Intex, the discount factor would represent a flat rate, so therefore, it decreases over time, but what exactly it was at various points along the curve, I don't know the answer.

Q. If you look at the page headed "Ares 12, Capital Structure," do you see that?

A. Yes.

Q. It's got a section headed Trigger/Tests Summary. Generally, what is that discussing?

A. Well, there are a variety of triggers that accelerate payments based on loss, based on deterioration in the over-collateralization of the underlying. So, based on what I can gather

M. Slattery

from the various trigger tests in this particular example, they all seem to pass. For example, the what they call the over-collateralization test is currently indicated to be at 129.67, where the trigger was at 116.90. Typically, if you fail a trigger, there is going to be an acceleration of payment.

Q. Look at paragraph 68. It states at the end, "...an additional liquidity discount was applied to derive my final CMBS value." Do you see that?

A. Uh-huh.

Q. Can you tell me how that liquidity discount was calculated?

A. It was Barclays' discount.

Q. Before we get to 721B, did you make any effort to derive your own liquidity discount on that for use in that calculation?

A. Not that I'm aware.

Q. And so fair to say that you, while you perhaps may not endorse the Barclays liquidity discount, you have no basis for disputing it?

A. At present, that would be fair.

(Exhibit 721B, a document produced as

M. Slattery

LEH-NAVIGANT 026182, marked for identification, as of this date.)

Q. Showing you what has been marked as 721B, sir, and I'll represent to you that this is the document that was produced as LEH-NAVIGANT 026182, and I'll ask you if you can tell me what this document is.

A. This outlines the model inputs on a CUSIP-by-CUSIP basis for the commercial mortgage-backed securities.

Q. That were part of this group of 30?

A. Yes.

Q. Discussed in Section F?

A. Yes. So the combination of 721 and 720 would be the 30 securities.

MR. TAMBE: I'll just note that there are sort of printing issues with it, but... You see the words truncated or the columns aren't wide enough, so you wind up with a bunch of pound signs.

MR. SHAW: Fair enough.

Q. If you will look, sir, at -- if you would look at the last page of that exhibit, sir, and there's a column headed "Price," can

M. Slattery

you tell me what's in that column?

A. That would be the output associated with the market inputs, the discount margin, or the spreads.

Q. And how were those derived?

A. The discount margins?

Q. Yes.

A. Those were based on market research.

Q. What market research, specifically?

A. I'll double-check. I'll have to check with my staff to determine which research they used.

Q. The "Price" column, is that the Chicago Partners price?

A. The mid.

Q. The mid price. All right. We'll put that one aside.

Let's move to Section G of your report, sir. How was this -- this reflects a valuation of slightly over 6,000 CUSIPs; is that correct?

A. 6,035.

Q. How was that population selected?

A. For the overwhelming majority, these

M. Slattery

instruments represent those that fell below the million-dollar threshold between the Barclays liquidity adjusted value and the BoNY's custodial value.

Q. Okay. And let me ask you how the entire population of CUSIPs to which you applied the million-dollar test was selected, that is, the ones that there was a million-dollar or more difference and the residual 6,035, what was the selection criteria for your viewing those roughly 6700 CUSIPs?

A. I believe --

MR. TAMBE: Objection to form. Go ahead.

A. I believe all the CUSIPs were contained in the Exhibit 86B, so we used that list.

Q. Okay. But it was -- is it your understanding that that is all of the CUSIPs on 86B, or is it your understanding that that's a subset of the CUSIPs on 86B?

A. Which number are we referring to?

Q. This roughly 6700 in total that you valued.

M. Slattery

A. The ones that are part of this report would be a subset.

Q. Okay. And so my question is, how was the particular subset that you, as opposed to some other expert or no expert, focused on selected, if you know?

A. Are we talking about the allocation of the work for the million dollars?

Q. Why was that particular 6700 selected for you? Was it by product categories or -- or what?

A. Product categories would be a fair depiction.

Q. And so how would you describe the product categories for which you had responsibility?

A. I had responsibility for mortgage securities, Treasury and agency securities. A description would be the fixed income securities set and the -- there were some instruments that fell to other experts, say, for example, municipals and there was other securities that were part of another expert's report, but I ended up with the majority of the fixed income

M. Slattery
securities, inclusive of a wide or broad categorization within that fixed income universe.
Q. Did you have any auction rate securities in your -- your portfolio that you looked at?
A. Not that I'm aware. It's possible that within the 6,000 there were. I did not go line-by-line or CUSIP-by-CUSIP in the 6,000.
Q. Was the work on the 6,000 primarily done by your staff?
A. It was done with predominantly with my staff and myself, and basically, it was a data mining exercise more so than a ground-up valuation effort.
Q. Have you reviewed Mr. Schwaba's report?
A. I have not personally reviewed his report, no.
Q. So you don't know how he valued the auction rate securities that he looked at?
A. I do not.
Q. Have you looked at Mr. Olvany's report?

M. Slattery
A. Excuse me?
Q. Mr. Olvany, have you looked at his report?
A. I have not.
Q. Have you looked at the reports of any other experts in this case --
A. I have --
Q. -- besides Pfleiderer?
A. I have reviewed other expert reports in a cursory way, and I relied on my staff to create notes for myself.
Q. Did you review corporate bonds in your population of 6,035?
A. There may be corporates in there, but I'm not a hundred percent sure. I don't think so, but I'm not a hundred percent.
Q. What about emerging markets, did you ever review any of those?
A. I'm going to refer back to a table. I don't think emerging markets is part of my universe.
We had 69 CUSIPs that fell into the third party pricing exercise, but the valuation difference was zero for emerging markets.

M. Slattery
Q. So the answer, then, is you did value some emerging markets securities?
A. They were included in the 6,000.
Q. And do you know how, if at all, your methodology for valuing differed from Mr. Olvany's?
A. I do not know.
Q. Did you value any rates?
A. Rates? What do you mean by "rates"?
Q. Is the term "rates" as a designator for a type of fixed income security not one of which you're familiar?
A. I believe I saw that as a tab on a exhibit, maybe 86B. But rates, are we talking about Treasury securities and U.S. agency debt securities? Then the answer would be yes.
Q. If you take a look at footnote 33 to your report, sir, and you state that, with respect to a group of CUSIPs -- this is at the end of the footnote -- you excluded prices from FactSet and Capital IQ due to inconsistency with prices observed for Lehman underlying credit exposure. Do you see that?
A. Yes.

M. Slattery
Q. What do you mean by that?
A. I'd have to go back and look at those particular CUSIPs to identify the meaning behind that footnote.
Q. Can you tell me why you decided it was appropriate to exclude those prices with respect to these 24 CUSIPs of Lehman structured notes but presumably not to exclude market prices with respect to other Lehman structured notes that appear in the portfolio that you were valuing?
MR. TAMBE: Objection to the form of the question.
A. I'd have to check my notes to see if there is an inconsistency there.
Q. Do you know how many Lehman structured notes there are in the population you valued?
A. I do not.
Q. The first sentence -- I'm sorry, in paragraph 70 of your report, in the last sentence you say, "For 31 CUSIPs, the prices were thrown out as inconsistent with the underlying security (credit, scaling issues, et cetera)." Do you see that?
A. Uh-huh.

M. Slattery

Q. What are you talking about there?

A. I think that relates directly to footnote 33 that I would need to go back and run additional research on.

Q. And the other part of footnote 33 are the six CUSIPs in the first sentence which talk about scaling issues and notional IO products, interactive prices, et cetera. Are you able to explain to me without going back what you meant by that sentence?

A. No, I would need to go back.

Q. Paragraph 70, again, you state, "The gathered prices represented closing or bid prices on September 19, 2008 and were treated as midpoint prices for purposes of this analysis."

Why did you move bid prices to midpoint prices for purposes of this analysis?

A. For conservatism, because then they were then subjected to an additional liquidity discount factor to arrive at the newly established bid.

Q. For how many of the prices -- of the securities that you valued in this group of 6,035 were you able to find only a single price

M. Slattery

observation?

A. I don't know the answer in terms of that. I believe that would be contained in the information that was provided last night.

Q. Do you know if it was more than half?

A. I don't know. I think the average number of prices that were obtained were approximately two.

Q. Do you know how many times --

(Exhibit 722B, shortened form of the spreadsheet bearing Bates No. LEHMAN-NAVIGANT 026437, marked for identification, as of this date.)

Q. Showing you what has been marked as Exhibit 722B. I will represent to you that this is a very much shortened form of the spreadsheet produced last night with a Bates number LEHMAN-NAVIGANT 026437. It should have all of the columns, but not all of the rows.

Do you recognize it as that?

A. Yes.

Q. Obviously, the first column is CUSIPs. The second is the asset category at issue.

You then have what called "Barclays

M. Slattery

Opening Balance Sheet Valuation." What's the source of that?

A. 86B.

Q. And then you have the "9/19/2008 Valuation (at Exit Marks)." And what is the source of that?

A. In that particular case, that would be the monetization of the average third party price for that particular CUSIP, which in this case I believe is a function of taking the "BVal" or Bloomberg valuation price of 128.68 plus the Cap IQ price of 122.52, dividing by 2, and arriving at the 125.60, and then monetizing that based on the position.

Q. Now, is it your understanding that the BVal -- well, when you were calculating a third party price for the column headed "Third Party Price," I take it what you were doing was you were taking however many third party price sources that gave you a price for that security on that day and then adding them together and dividing by the number of prices you observed in order to come up with an average price?

A. That would be accurate.

M. Slattery

Q. And if you had no third party price available, I take it you would use the BoNY price?

A. Yes.

Q. Why would you use the BoNY price rather than the Barclays price?

A. We were asked to independently or arrive at values independent of Barclays. In that case, BoNY would be the option available to us, and BoNY for that matter, at least as my opinion goes, is a premiere custodian in the marketplace, subject to their own regulation, and that this is their business. As a result, I don't necessarily have a reason to refute or contradict the use of the BoNY price in this exercise.

Q. Just so we're clear, are you offering any opinion that the valuation professionals of Barclays were less experienced, qualified, or skilled than their counterparts at BoNY?

A. I am not opining as it relates to Barclays' abilities across their personnel or staff. What I am offering an opinion on is the use of the BoNY price in the absence of third

M. Slattery

party prices when they weren't available, and to us BoNY represented the independent value that was available given the choice between the two, namely, Barclays versus BoNY.

Q. And what do you mean by "independent value"?

A. The use of BoNY's allowed us to be independent to Barclays, but then we integrated the Barclays liquidity factor, in the majority of cases to be conservative, thus allowing us to gain comfort and confidence in the use of BoNY price, which again, by definition, would be independent of the Barclays price.

The other issue to raise in terms of the use of the BoNY price, of the 6,000 securities we used the BoNY price approximately 1500 times. These instruments on a value differential basis at inception, for the most -- in most cases, fell below the million-dollar threshold. So the total valuation difference attributable to these is a smaller dollar amount on a transaction-by-transaction basis.

When aggregated across 1500, there is an identifiable or quantifiable delta. However,

M. Slattery

the 1500 BoNY-priced securities in this dataset, in aggregate, represent about a $250 million delta, which is less than 10 percent of the total delta in my report.

Q. So if I followed what you just said, of the 6,000 securities that you valued in this bucket, approximately one-quarter of them you were unable to find any third party price for on 9/19, is that correct?

A. Yes.

Q. And in those instances, you uniformly used the BoNY price?

A. Correct, adjusted with the use of the Barclays liquidity factor. There are some securities that are in that population that were arrived at based on the fact that the third party pricing averaging represented a greater than two standard deviation when compared to BoNY's or Barclays', so there are some securities of that ilk in this particular 1500.

Q. And do you know how many securities fall into that category?

A. We identify it in paragraph 71. 62.

Q. And in the remaining 4500 or so

M. Slattery

securities that you valued here, you were essentially rejecting the BoNY price in favor of what you term a third party price; is that correct?

A. "Rejection" is not the term that I would use. We, if we had third party prices available, we would use them. If not, then the next best alternative, in my opinion, in our opinion, was to use the BoNY price, adjusted for the Barclays liquidity factor.

Q. And so I'm clear, when you make that distinction or, rather, when you decide that the next best alternative is to use the BoNY price, that's simply on the basis of the fact that you view BoNY as a -- was it a premier custodian?

A. That's part of it.

Q. What else is involved in that?

A. Well, as a premier custodian, this, again, this is their business. If anything, our expectation would be they would side on the conservative price orientation as opposed to an aggressively or overpriced orientation given the fact that they do represent a custodian of great repute and subject to regulation and extensive

M. Slattery

audits.

Q. So is it your understanding that Barclays is not subject to regulation and extensive audits in its valuation of securities that it deals with?

MR. TAMBE: Objection to form.

A. That's not what I'm saying, no.

Q. Is it your opinion that the Barclays' prices are less -- or, that Barclays' valuations of securities are less reliable than BoNY's valuations of securities?

A. No. The way I would describe it would be they would be less independent. BoNY represents an independent alternative, an autonomous alternative to Barclays.

Q. So is it your suggestion, then, that the people who were doing the valuations at Barclays were biased?

A. I have no ability to offer an opinion as to their motivations one way or the other.

Q. So when you say that they're less independent, what do you mean?

A. Well, these positions were part of Barclays' portfolio at a point. Therefore,

M. Slattery

independence would have to be taken outside the walls of Barclays in order to achieve the objective that I was -- or, the mandate that I was given, which was to independently value them.

Q. So the fact that Barclays' professional valuation experts, people who were active in this market, who were valuing securities in this market, reached conclusions about a valuation is something that you did not take into consideration at all in determining what the appropriate valuation should be?

MR. TAMBE: Objection to the form of the question.

A. We took into account their liquidity factor, which contributed or was at least an element of their pricing framework.

Q. Why did you chose their liquidity factor as opposed to any other liquidity factor?

A. In that sense, again, in the majority of cases, by using theirs we felt it was a more conservative approach.

Q. What about the PwC auditors who reviewed Barclays' valuations process, were they

M. Slattery

an independent source of validation for Barclays' valuations?

MR. TAMBE: Objection to the form of the question.

A. I'm not here to offer an opinion on what PwC represented in the process as it relates to that.

Q. Well, did you consider the fact -- do you know if the BoNY valuations at issue here were ever audited?

A. I do not know.

Q. You know that the valuations that Barclays put on this portfolio were in fact audited, correct?

A. I do not know that.

Q. You don't know that one way or the other?

A. Correct.

Q. And with respect to the -- the 600 or so securities for which you did -- which you term your ground-up or bottom-up, whatever the phrase was, valuation process, if there were no third party prices available, you did not see fit to accept the BoNY marks. Why was that?

M. Slattery

A. Can you rephrase that question?

Q. Sure. With respect to the 600 or so securities that met your million-dollar variance test, some of those there were no available third party prices for; is that correct?

A. I don't know that to be a hundred percent truth. I don't know.

Q. I'm not saying that all the 600, but there were certainly some within that population of 600 for which you were unable to find a third party price on 9/19; is that correct?

A. Correct.

Q. With respect to those, you did not just accept the BoNY price; is that right?

A. Correct.

Q. Okay. And did your valuations on any of those instances differ from BoNY's?

A. I would have to check and draw a comparison between our results and BoNY's for the 600 that I did value.

Q. You have not looked at that issue at all?

A. I have not.

Q. Now, you've said that with respect to

M. Slattery

these 6,000 CUSIPs, you used Barclays' liquidity discounts?

A. In the majority of cases. Where we had the liquidity discounts that we calculated, then they were applied for specific instrument types. So if there were agency debt securities that fell into a particular maturity bucket, we used the ones that we calculated, but for, say, for example, in the extract that you provided, these corporate debentures, we used Barclays', and I guess there's one muni on here, so we used Barclays.

Q. So of the 6,035 CUSIPs in this bucket, for how many did you use a Barclays liquidity discount?

A. I don't know that answer.

Q. And in order to determine whether any given liquidity discount was a Barclays discount or a -- or one that you derived, how would I go about that?

A. Probably filter based on asset category.

Q. And where would I have a comprehensive list of the asset categories in which you are

M. Slattery

providing your own liquidity discounts?
A. Go back to an exhibit that was provided earlier. It's the two-page exhibit.
Q. Number 716B?
A. Correct. But for the few that warrant, you know, further investigation or retracing the steps.
Q. Taking a look at 716B, sir, did you -- the liquidity discounts you have given here are what I'll call point estimates, in other words, they're not ranges, but it's a specific number; is that correct?
A. Correct.
Q. Did you -- did you estimate any sort of a or calculate any sort of a confidence interval around those estimates?
A. No.
Q. With respect to any given liquidity discount here, would it be fair to say that there's a range of reasonable liquidity discounts that a reasonable valuation professional could arrive at?
A. It is possible that another valuation professional could arrive at a different

M. Slattery

liquidity discount depending on perspective. However, it's equally likely that they could end up in the exact same data point series.
Q. In order to end up in the exact same data point series, sir, wouldn't they have to find the Fabozzi 1997 numbers and use that to calculate a multiple the way that you did?
MR. TAMBE: Objection to the form of the question.
Q. That would be a "yes"?
A. That would be a starting point to end up at the exact same point, yes.
Q. Where did you get the idea to use the Fabozzi multiple to estimate the multiple for moving from normal to distressed conditions or, rather, stressed conditions?
A. I was aware that he had written about that very issue in one of his books. We located it and we used it.
Q. Are you aware of any -- have you ever performed that same calculation of a stressed liquidity discount using the Fabozzi data to derive a multiple in any other valuation?
A. I have not, no.

M. Slattery

Q. Have you ever heard of anyone doing that?
A. Members of my team have, yes.
Q. Who specifically?
A. Roderick Powell.
Q. And under what circumstances did Mr. Powell do that?
A. As part of his work at Bank of America as an enterprise risk professional.
Q. Are you aware of any -- of any studies or academic literature suggesting that that is an appropriate method for performing such a calculation?
A. Am I aware of any academic literature?
Q. Yes.
A. Not that I'm aware.
Q. Are you aware if that's been accepted by any valuation standards organization?
A. Such as.
MR. TAMBE: Objection to the form.
Q. Such as any professional organization that promulgates standards for valuation.
A. I can't offer an example of one, no.
Q. Are you aware if that technique is --

M. Slattery

has been subject to an audit by any reputable accounting firm?
A. The work that we did in the derivation of liquidity factor?
Q. That type of a technique, yes, sir.
A. Again, if I can't point to the technique in terms of academic literature, I don't know of a particular audit firm that has gone down that path either in terms of their work.
Q. So, aside from your experience in this case and Mr. Powell's experience on some valuation he did internally at Bank of America, you're not aware of any valuation professional in history ever using the approach that you have used?
A. I don't know if I can answer that question.
Q. Well, either you're aware of it or you're not.
A. In the history, because I'm not aware of it doesn't mean that a similar effort has not been undertaken in terms of valuation professionals.

M. Slattery

Q. Well, all things in this world are possible, sir. The question is, as you sit here today, you're not aware of any example of that?

A. That is correct.

Q. Did you attempt to calculate a confidence interval around any of the valuations that are stated in your report?

A. No.

Q. Turn, if you would, to section or, rather, to paragraph 56 of your report, sir.

MR. SHAW: Actually, why don't we take a short break now. Make sense?

MR. TAMBE: Yes. Are you still on track for the 5?

MR. SHAW: Yes. I'm about to move into a new area, so it probably makes sense.

THE VIDEOGRAPHER: This concludes tape number 3 in the videotaped deposition of Mark Slattery. The time is 4:02 P.M. We're now off the record.

(Recess.)

THE VIDEOGRAPHER: This begins tape number 4 in the videotaped deposition of Mark Slattery. The time is 4:11 P.M. We're

M. Slattery

now on the record.

BY MR. SHAW:

Q. Sir, in paragraph 56 of your report, you use the phrase "information in Barclays' possession at the time that Barclays acquired the Class A-1 tranche." Do you see that?

A. Yes.

Q. What do you understand the information available to Barclays at the time it acquired this position to have been?

A. Based on my understanding, it would have been analogous to an investor report.

Q. And what's the basis for your understanding of that?

A. Just my -- my understanding, my impression. I don't know if I have a basis in fact for it.

Q. Do you know when the Pine CLO was created, origination date?

A. No, I do not.

Q. Do you know for what purpose the Pine CLO was created?

A. I do not.

MR. TAMBE: Objection to form.

M. Slattery

Q. Do you know whether the Pine CLO was created with the intent that it would be marketed to investors?

MR. TAMBE: Objection to form.

A. I do not have that knowledge, no.

Q. Do you know if, apart from the sale of a portion of the Pine CLO to Barclays, any portion of the Pine CLO was ever sold to any entity outside of Lehman?

A. My understanding is that, no, no portion outside of the A-1 has been sold.

Q. At any time?

A. Based on my knowledge, no.

Q. Do you know whether, prior to the bankruptcy of Lehman in mid September, any major investment banks had offered any opinions on the value, proper valuation of Pine?

A. Not that I'm aware.

Q. Would it be something you would want to consider in valuing the Pine CLO if Citibank personnel had looked at Pine and placed -- and attempted to value it in late summer of 2008?

MR. TAMBE: Objection to the form of the question.

M. Slattery

A. I'm sorry, what -- the question as it relates to would it be useful to integrate that or examine --

Q. Is that something -- in attempting to value Pine as of either the 19th or the 22nd of September, 2008, would information concerning the assessment of the -- of Pine's value from Citibank personnel be something that you would want to take into account?

MR. TAMBE: Objection to the form of the question.

A. In valuing the Pine CLO as of the 19th of September?

Q. Yes, sir.

A. It would be advisable to integrate such research. However, I would have to, based on the extensive -- based on an extensive read of that research, I would have to conclude whether or not that had inconsistent -- a consistent perspective or consistent understanding of the Pine CLO and did it in fact integrate all the issues that we've identified. So it would be worth reviewing.

Q. In your view, does the Pine CLO have a

M. Slattery

value for purposes of appropriate valuation as of either 9/19 or 9/22/08 that is distinct from what it could be sold for to a willing buyer in the market?

A. I am not sure I understand the question.

Q. Yes. My question, sir, is in valuing the Pine CLO, did you attempt to determine what a willing buyer would pay for that CLO as of the valuation date?

A. We valued the Pine CLO, specifically, the A-1 piece, based on a ground-up valuation exercise, tantamount to what we would expect a potential willing buyer to pay for that particular security.

Q. So your view is that the valuation exercise you performed was intended to predict what a willing buyer at that time in that market would have paid for the Pine CLO A-1 tranche?

A. I don't know if I'd use the word "predict." We intended to quantify the price, the value of the A-1 tranche of the Pine CLO as of the 19th, yes.

Q. And my question, just so we're clear,

M. Slattery

is, in your mind, is there a difference between the value of the A-1 tranche of Pine CLO and what a willing buyer would pay for it on that date?

MR. TAMBE: Objection to form.

A. I would be willing to concede that it's possible.

Q. Do you know whether JPMorgan personnel had valued the Pine CLO, specifically, the A-1 tranche of the Pine CLO, in September of 2008?

A. I am not personally aware, no.

Q. Is that something that you would want to take into account in your valuation of the Pine CLO?

A. The extent to which I would take into account such research, be it Citi or JPMorgan, would be a clear and more extensive understanding of what they actually did to value that particular position. If I fundamentally disagreed with the manner with which they approached the valuation exercise, then I would, by default, not agree with the value that they assigned.

Q. What was the market for CLOs like in

M. Slattery

September of 2008?

MR. TAMBE: Objection. Form. Objection. Asked and answered.

A. I don't have an opinion in terms of the market for CLOs as of September 2008.

Q. And I take it you were not in any way involved in the -- in the market for CLOs of the type represented by the Pine tranche A-1 in September of 2008?

A. Specifically, that segment of the market, I was not.

Q. Were any members of your team?

A. Not that I'm aware.

Q. In paragraph 61 of your report you say, "I have researched" -- well, let me back up. You say, "Given that the collateral is owned by the CLO trust and not Lehman, the security interest in the loans is not at risk. I have researched this issue and have found no instance where a master participation agreement in a CLO was not enforced in a bankruptcy." Do you see that?

A. Yes.

Q. What did you do to research that

M. Slattery

issue?

A. Worked with a colleague out of the New York office who had extensive experience in this particular market.

Q. And who was that colleague?

A. Chi Lee.

Q. And what experience did he have -- first of all, when you say "this particular market," which particular market are you talking about?

A. CLO, CDO market.

Q. And what was his extensive experience in that market?

A. He was at UBS on the securitization side, deals similar to this one.

Q. And what did he do to research the question of what had happened in bankruptcies?

A. It was more or less me using his experience as a means to arrive at the conclusion that I did.

Q. So when you say you researched it, you mean you asked one of your colleagues at Chicago Partners?

A. Who had extensive experience in the

M. Slattery
appropriate marketplace, yes.
Q. Do you know if he did anything other than just think about it?
A. I don't know.
Q. Did he -- was this a telephone conversation?
A. A series of conversations.
Q. Over how long a period of time?
A. Weeks.
Q. Do you know if he undertook any research whatsoever into this question?
A. I do not know the answer to that question.
Q. Do you know whether he identified any instances where a bankruptcy court had in fact enforced such a provision?
A. Not that I'm aware.
Q. So in -- in providing your valuation of the Pine CLO, one of the things you're relying on is the information that your colleague -- was it Mr. Lee? -- provided to you; is that correct?
A. Yes.
Q. He provided that to you in writing; is

M. Slattery
that correct?
A. No.
Q. So it was oral?
A. Yes.
Q. Is it your view that the fact that the holders of the junior tranches had filed for bankruptcy would have no adverse impact on the valuation of the A-1 tranche?
A. Is it my opinion?
Q. Yes.
A. That the event of default would not have any adverse effect other than the technical implications of the default, yes.
Q. What's the basis for that opinion?
A. Based on my understanding of the trigger, an event of default in this case, the A-1 has the ability to obtain or secure all the assets underlying the deal.
Q. And what's the basis for that understanding?
A. Based on my understanding of the -- the Pine CLO description documents.
Q. Does Pine hold the loans to which it looks for funding -- or, strike that. The CLO

M. Slattery
consists of interests in various loans, correct?
A. Uh-huh. Yes.
Q. Does Pine hold any of those loans directly?
A. I believe it's held by the Trustee.
Q. And who is the Trustee?
A. I believe Lehman.
Q. Is it, therefore, dependent on -- when I say "it," is Pine, the Pine CLO, therefore dependent on a bankrupt Lehman subsidiary to pass on all interest and principal payments received from the obligors on the underlying loans?
MR. TAMBE: Objection to the form of the question.
A. I don't know the implications of their legal status as it relates to Pine.
Q. Do you know whether in fact, for any period of time, the bankrupt Lehman entities declined to pass on the -- the interest and principal payments to the Pine CLO?
MR. TAMBE: Object to the form of the question.
A. I am not aware if they did that.

M. Slattery
Q. Do you know whether -- do you have any opinion on whether it would have been reasonable to be concerned that the bankrupt Lehman entities would in fact not pass on principal and interest payments on the loans to the Pine entity?
MR. TAMBE: Objection to the form of the question.
A. Can you restate that question?
Q. Sure. Do you have any opinion on whether it would have been reasonable as of September 19th or 22nd, 2008 to be concerned that the bankrupt Lehman entities would not pass along or pass through to the Pine entity the principal and interest payments that they received from obligors on the underlying loans?
MR. TAMBE: Object to the form of the question.
A. In this case, I'm not sure if it's reasonable to assume that. I'm not sure.
Q. Do you have an opinion that there was no legal risk to the holders of the A-1 tranche of the Pine CLO that they would not in the bankruptcy or as a result of the bankruptcy

M. Slattery

receive all of the payments or funds that they would otherwise anticipate?

MR. TAMBE: Objection to the form.

A. I'm not an attorney, so I can't offer an opinion as to the legal risk.

Q. Do you have any opinion on whether a legal risk would have an impact on the appropriate valuation of Pine?

MR. TAMBE: Same objection.

A. I don't have an opinion as to the legal risk. However, I think all risk mentioned should be incorporated in a value.

Q. If you would look at paragraph 64 of your report, sir. I want to be clear about what you're saying. You state, "In reviewing LoanX, I observed that on September 19, 2008, 20 of the 55 underlying loans making up approximately 50 percent of the value of the underlying collateral reflected a weighted average price of 90.2." Do you see that?

A. Yes.

Q. I think I know what you're trying to say here, but there is a little bit of a textual ambiguity. I want to clear it up.

M. Slattery

Are you saying that 20 loans made up 50 percent of the value or are you saying that 55 underlying loans made up 50 percent of the value?

A. 20 of the loans making up or representing 50 percent of the value.

Q. So you're saying of the total of 55 underlying loans --

A. Less than 40 percent.

Q. Right, 20 of them made up approximately 50 percent of the value?

A. Correct.

Q. Did you look at the other 50 percent? What was their weighted average price?

A. I don't recall that number off the top of my head.

Q. Was it higher or lower than the 90.2?

A. I don't recall.

Q. Did you look at the average -- the weighted average price for all of the collateral, all of the underlying loans?

A. I don't recall.

Q. Why not?

MR. TAMBE: Objection to form.

M. Slattery

Q. Why did you not look at that?

MR. TAMBE: Objection to form.

A. We didn't have LoanX prices for all of the 55 credits.

Q. Of the 20 -- the 20 loans that you have identified here, is there a place in your work papers I can go to see which 20 those are?

A. I believe so.

MR. TAMBE: Do you want to know?

MR. SHAW: Yes.

MS. STROHBEHN: I believe it would be LEHMAN-NAVIGANT 026183.

(Exhibit 723B, a document produced as LEHMAN-NAVIGANT 026183, marked for identification, as of this date.)

BY MR. SHAW:

Q. Showing you what has been marked as Exhibit 723B, sir, is that the document that would tell you which 20 loans, 20 of the underlying loans you were talking about?

A. I believe this is the spreadsheet. I'm just trying to find the location.

It's the very last page.

Q. And are the 20 the ones that are

M. Slattery

shaded?

A. Yes.

Q. And the source of that is the LoanX database?

A. Yes.

Q. Were you able to find ratings for all of the loans?

A. I don't think we were able to do that, no.

Q. Were you able to find ratings for any of the loans?

A. I think we identified a subset of loans that we actually had ratings for, yes.

Q. And where would I find that, sir?

A. I don't think that's captured in this spreadsheet.

Q. Do you know how many of the loans were junk, rated junk, or non-investment grade, if you prefer?

MR. TAMBE: Objection to the form of the question.

A. I do not know the number or percentage of the loans that were deemed to be below investment grade. We did evaluate the

M. Slattery

performance of the loans that were part of the Pine CLO as of September. It didn't include all 55 and some were unfunded, as it were. 39 of the 45 that were funded were performing loans.

Q. Of the performing loans, is one of them the Archstone Smith 1007 Revolver.

A. I don't remember exactly the 39 versus the 6 versus the remaining.

Q. Now, in Note 32 to your report, sir, you note that S&P's downgrade of Barclays A-1 tranche was purely technical. What do you mean by that?

A. It did not affect the underlying credits. It did not impair the underlying collateral.

Q. Well, is it your assertion that the S&P downgrade of the A-1 tranche would have no impact on the price that one could obtain by selling the A-1 tranche?

A. That's not what I'm suggesting. It's possible that the downgrade from a certain segment of potential buyers would affect their view of the value of the A-1.

Q. Do you know whether -- did you look at

M. Slattery

any subsequent rating agency reports on the Pine security?

A. Subsequent?

Q. Subsequent to September 19, 2008.

A. I did not personally, no.

Q. In determining the value of Pine, did your work result in any range of price estimates for a single point estimate?

A. During the course of the work, there were different scenarios evaluated. At the end, it was a single point estimate of value.

Q. And what was the range of different -- different estimates that were reached in the course of your work?

MR. TAMBE: Objection to the form of the question.

A. Dollar amounts of the range I don't remember off the top of my head.

Q. Was it -- can you give me an order of magnitude of the size of the range?

MR. TAMBE: Object to the line of questioning. This is contrary to the stipulation between the parties. He's provided the reliance materials that his

M. Slattery

report is based on, his opinions are based on. I think draft opinions, draft conclusions of any type we have not asked you to produce. It goes outside the scope of the stipulation.

Q. Did any of the other valuations that you came up with for the Pine CLO exceed the price that you ultimately put on it?

MR. TAMBE: Same objection. It's outside the scope of the stipulation on experts, on expert discovery.

Q. Did you calculate a confidence interval around the price you put on the Pine CLO?

A. No.

Q. Do you have any -- strike that.

MR. SHAW: Tell you what, let me take five minutes. I think I'm pretty close to done, and that way we don't have to do this on the record while I look for an exhibit that's missing.

THE VIDEOGRAPHER: The time is now 4:42 P.M. We're now off the record.

(Recess.)

M. Slattery

THE VIDEOGRAPHER: The time is 4:48 P.M. We're now on the record.

BY MR. SHAW:

Q. Mr. Slattery, I would refer you to paragraph 47 of your report, sir, and that says, "In addition, Barclays sold a significant amount of the acquired non-Agency RMBS portfolio during a short timeframe. Therefore, the sale prices do not reflect an orderly disposition of these assets, but a fire sale." Do you see that?

A. Yes.

Q. And the citation you have for that in the footnote is "Expert Report of Mr. Pfleiderer, Appendix Four, Section Six, page 110." Do you see that?

A. Yes.

Q. Footnote 22. And is footnote 22 intended to be the support for the final two sentences of paragraph 47 or the final sentence of paragraph 47?

A. The final two sentences.

Q. Okay. And are you aware of any other support or anything else you are relying on to support that statement?

M. Slattery

A. No.

Q. I'm going to show you, and I, unfortunately, don't have multiple copies, but I'm going to show you Appendix 4 from Professor Pfleiderer's report, and I'm just going to ask you to take a look at the page you cited and let me know where you find the support for that proposition on that page.

A. I don't see it.

MR. SHAW: Thank you. I have no further questions for you.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: This concludes tape number 4 of 4 of the videotaped deposition of Mr. Slattery. The time is 4:50 P.M. We are now off the record.

oOo

____
MARK SLATTERY

Subscribed and sworn to
before me this day
of 2010.

____

M. Slattery

CERTIFICATE

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

I, Kathy S. Klepfer, a Registered Merit Reporter and Notary Public within and for the State of New York, do hereby certify:

That MARK SLATTERY, the witness whose deposition is herein before set forth, was duly sworn by me and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that neither the deponent nor a party requested a review of the transcript pursuant to Federal Rule of Civil Procedure 30(e) before the deposition was completed.

In witness whereof, I have hereunto set my hand this 16th day of April, 2010.

M. Slattery

INDEX

M. Slattery

INDEX (Cont'd.)

M. Slattery

NAME OF CASE: In re Lehman Brothers
DATE OF DEPOSITION: April 16, 2010
NAME OF WITNESS: Mark Slattery
Reason Codes:
1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

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